

Origin of the Organization and Governance of a Modern University: The University of Michigan in the Late Nineteenth and Early Twentieth Centuries

by

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ABSTRACT

Origin of the Organization and Governance of a Modern University: The University of Michigan in the Late Nineteenth and Early Twentieth Centuries

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This dissertation examines two critical periods in the history of institutional transformations at the University of Michigan: the University's battle for constitutional autonomy during the second half of the 19th century, and the creation of the University's business administration in the early 20th century. Constitutional status secured the University's autonomy over its own internal management – a power entrusted to the University Regents and protected from interference of the state legislature. However, this autonomy also diminished access to the University through the public sphere of the political realm, and allowed the University to engage in the private sphere of economic activities heavily influenced by the professions. At the turn of the 20th century, the University's institutional autonomy set the stage for its.

management reform. The authority of management was dispersed and placed in the charge of business administration professionals, executive officers and academic units. This drastic overhaul of the administrative system initiated by University business officers and based on models borrowed from industry brought about a profound transformation of the University's governance and administration.

This study engages a wide range of topics such as corporation, public-private dichotomy, profession, management, accounting and social engineering, in order to examine the relationships between university governance and management, and between university, state and society. Although the study ends at the 1930s, its reexamination of the formative period of a key American public university provides a useful historical case for better understanding the relationships between government, public universities and modern society at the turn of the 21st century.

CHAPTER I

INTRODUCTION

In this dissertation, I examine two critical periods in the history of institutional transformation at the University of Michigan: the University's battle for constitutional autonomy during the second half of the 19th century, and the creation of the University's business administration in the early 20th century. Although one could describe the first period as establishing the University's governance and the second as establishing its system of management, the issues of governance and management are, in fact, intertwined. Constitutional status secured for the University autonomy over its own internal management – a power entrusted to the University Regents and protected from interference of the state legislature. This authority over internal management, however, was later dispersed and placed in the charge of business management professionals, executive officers and academic units – a transformation of the authority structure that profoundly redefined the University's governance and operation.

This study of the University of Michigan not only examines history to reveal overlooked events and processes, but also addresses conceptual issues about the relationship between university governance and management, and between

university, state and society. Although this history stops at the 1930s, its revisiting of the formative period of an American public university provides a useful historical case for better understanding the relationships between government, public universities and modern society at the turn of the 21st century.

This introductory chapter first reviews observations of scholars on governance and legitimacy crises faced by contemporary American higher education, especially public colleges and universities. Comparing these concerns and the phenomenon on which they are based with those in earlier historical periods, I point out the intriguing similarities. Second, I explain my selection of the research site along with the primary sources used. Third, I explain the institutional theoretical perspective used to frame my analysis, by contrasting it with an organizational theoretical perspective. Fourth, I introduce historical backgrounds and conceptions useful to achieve an understanding of the social position of the public university. Fifth, I provide a brief summary of each chapter in the dissertation.

Background of the Study

Contemporary scholarship on government, university and society relations is built primarily on studies of universities in the second half of the 20th century. Increasing social and economic demands for knowledge and educated labor since WWII have rendered universities essential to the nation-state in global economic competition. And yet, universities have simultaneously experienced the growing erosion of public tax support through several decades of retrenchment since the 1980s (Altbach, Berdahl, &

Gumport, 1999; Gumport & Pusser, 1997, 1999; Kerr, 2001). The decline of government support has been exacerbated by neo-liberal public policies that drive universities to pursue tuition increases and further commodification of knowledge, resulting in privatization and commercialization (Slaughter & Leslie, 1997; Slaughter & Rhoades, 2004). Diminished public confidence coupled with heightened accountability requirements present higher education with irreconcilable problems of cost, quality, effectiveness and access (Dill & Sporn, 1995; Gumport & Sporn, 1995; Kerr, 1994; Peterson et al., 1997). The changing relationships between universities, the state and society have brought forth dramatic academic restructuring in the last thirty years, characterized by increasingly pervasive market discourse and managerial approaches (Amaral et. al., 2003; Gould, 2003; Gumport & Pusser, 1997; Gumport, 2000).

Patricia Gumport, one of the leading scholars to reflect critically on these important changes within contemporary higher education, examines the scale and impact of such shifts. She points out, "Demand for management reform, including mandates to apply business-like strategies, is evident in higher education across a wide range of national systems and institutions through Europe and the United States" (1999, p.3). Against this backdrop, Gumport and others raise concerns about the growing tendency to approach higher education as an industry, rather than a social institution (Altbach, Gumport, & Johnstone, 2001; Gumport, 2000; Kezar, 2004).

Gumport's explanation of the contrast between these two perspectives is as follows: "[F]rom the perspective of higher education as a social institution, public colleges and universities by definition must preserve a broader range of social functions

that include such essential educational legacies as the cultivation of citizenship, the preservation of cultural heritage(s), and the formation of individual character and habits of mind” (2000, p.71). In contrast, from the perspective of higher education as industry, “public colleges and universities are seen increasingly as a sector of the economy; as with firms or businesses, the root metaphor is a corporate model of production—to produce and sell goods and services, train some of the workforce, advance economic development, and perform research” in a competitive marketplace to be managed in accordance with economic rationality such as efficiency, cost-benefit analysis, demand and supply and so on (Gumport, 2000, pp. 70-2). Another aspect of this industry perspective is its emphasis on the role of administrators as “managers who diagnose and prescribe organizational well-being,” “determine the potential costs and benefits of any course of action,” and “occupy the most visible leadership roles in public universities and college function as interpreters for the rest of the organization” (Gumport, 2000, pp. 76-8). This expanded role of administrators entails an expanded managerial domain within academic governance, which, in turn, further entrenches the conceptualization of higher education as an industry, and also undermines role of faculty in running the university.

The above literature often frames this expansion of administrative power as a development that emerged primarily out of the 1980s, even though the literature also claims to offer some historical perspective (Gumport, 2000). Yet, the concerns similar to those raised by Gumport and others very much echo arguments expressed by prior generations of scholars. For example, in 1966, Rourke & Brooks published on a higher

education management revolution reportedly taking place in the 1960s, which also resulted in enhanced administrative power and encroached faculty jurisdiction. Indeed, the perception of higher education functioning as manufacturing corporations controlled by business-minded managers appeared even earlier in history, as testified by the once famous book by Thorstein Veblen, *A Memorandum on the Conduct of Universities by Business Men*, which was first released in 1918 (Veblen, 1957).

The influence of management models developed by business corporations on university organization has also long been a topic of discussion among modern historians of education. For example, historian Laurence Veysey (1967) devotes a section of his book on “Business Models for Education Enterprise” (Veysey, 1967, p. 346) and uses the word “managerialism” (p. 434) to describe the organization of university operation at the turn of the twentieth century. Similar to contemporary scholarly discussions and debates, this historical view focused on the purpose and functions of university, the relationship between the university and its outside world, and the power balance between faculty and administration in university governance.

In addition to Vessey’s classic historical study of American universities, works by other scholars also reveal that between the 19th century and the first half of the 20th century, complex social processes such as state-formation (Nemec, 2006), industrialization (Barrow, 1990; Newfield, 2003), corporatization (Duryea, 2000; Newfield, 2003), and professionalization (Abbott, 1988; Bledstein, 1978) set the crucial historical contexts for the development and transformation of the modern university as a major social institution. Long before the 1980s, in fact, modern universities developed

close relationships with industry, business, professions and government. These relationships, in turn, played a significant role in defining what social functions American universities claimed to perform, what constituted legitimate “knowledge” and how it was used, and how university operations were governed and organized.

Given the lack of historical depth in contemporary debates about the trends and implications of contemporary higher education changes, my study returns to the formative periods of American university governance and management in the late 19th and early 20th centuries. The purpose of my study is not only to enrich historical studies of higher education, but also to conceptualize the complex set of relationships within which higher education had been embedded, and to build an understanding of the historical roots of current higher education crises. Through a case study of one university, the University of Michigan, I aim to examine how its governance and management was established, structured and legitimized, and how this process was situated in the historically-specific relationship between government, university and society.

Site and Sources

I have selected the University of Michigan (UM or the University henceforth) as my case not only because it is the institution to which I have the greatest access, but also because it provides an ideal case for investigating issues of significant interest. From early on in its history, the University of Michigan was a flagship for American public universities (Duryea, 2000; Price, 1923). It enjoyed an uncommon constitutional

autonomy which protected its internal management from legislative interference, but which also subjected it directly to the people of the state of Michigan. To gain legal recognition of this constitutional autonomy, it endured a long battle with the legislature and the medical profession in the latter half of the nineteenth century (see Chapter 4). And in the early 20th century, it saw the installation of a completely new business administrative structure with models borrowed from the business world and industry, against a backdrop of regional and national movements spearheaded by newly established professional associations of university business officers (see Chapters 5 and 6).

These historical processes have critical relevance to contemporary debates concerning the governance and autonomy of public universities, the implementation of business models in university management and the attendant ramifications. In addition to its historical relevance, the single case of the University of Michigan demonstrates the socially-embedded evolution of an institution, for university affairs were significantly affected and shaped by a variety of social institutions, such as government, industry, and profession, all of which exerted influence at both the state and the national level. For these reasons, the University of Michigan presents an ideal-type for the study of the complex relationship between university, government and society, and provides rich historical materials for a nuanced examination of university governance and management.

The primary sources used in this dissertation may be categorized into four groups:

- 1) The University records which include the proceedings of the UM Regents meetings (1837-1939), annual reports of the presidents (1852-1864, 1871-1909, 1921-1945),

annual financial reports (1910-1930), correspondence and essays of Shirley Smith, the first business officer of UM; 2) the proceedings of the annual meeting for the Association of Business Officers of the State universities and Colleges of the Middle West (1912-1930) (henceforth, the Association); 3) relevant documents of the Carnegie Foundation for the Advancement of Teaching, which include the speeches of the first CFAT president, Henry Pritchett, and pertinent CFAT reports; 4) miscellaneous sources, such as compiled Michigan Statutes and Constitutions in the 19th century, and some society records to verify biographical information. With regards to the histories of UM and the profession of homeopathy, a large body of secondary sources, some of which were produced in the late 19th century, is fortunately available.

In order to develop the historical account of this study, it is important to compare historical materials from as many perspectives and sources as possible (within reasonable limits, of course). I have taken particular care to preserve and present, as much as possible, conflicting views and narratives. Rather than rushing to judgment, I have posed questions; attempted to consciously resist the often presumptive framing of existing theories; and examined the evolution of critical concepts and institutions, such as corporation, and the public, rather than simply taking these concepts for granted. For this reason, I do not begin my analysis with a theoretical framework as such. Instead, I distinguish between an *organizational* perspective and an *institutional* one, and discuss the latter's influence on the analytical approach I use in this historical investigation.

Analytical Approach: Beyond Organizational and Institutional Theoretical Perspectives

Scholars such as Clyde Barrow (1990) and Julie Reuben (1996) write in their historical work about using an institutional approach, examining institutions and institutionalization without providing specific definitions of these terms. I describe my approach as an institutional, rather than organizational, approach and thus, it is reasonable that I should explain what I mean by “institutional.” I would like to argue that the distinction between “organizational” and “institutional” is important and necessary. In this section, first I will briefly review the history of these two perspectives in the social sciences. Second, I use the critique and suggestion of Gumpert (1999, 2001) to demonstrate how the distinction between the two can be blurred. Third, I use the arguments of Burton Clark (1983), Leon Epstein (1974) and Clyde Barrow (1990) to demonstrate how the two perspectives may produce different observations and interpretations about university governance, and university relationship with state and society. At last, I explain how I understand “institutional approach” specifically in relation to the research for this study.

Organizations, as vital mechanisms for pursuing collective goals in modern society, have been studied by social scientists in various disciplines since as early as the 1930s. The 1950s witnessed the emergence of a formal area of scholarly inquiry focusing on the creation and empirical testing of generalized knowledge concerning organizations (Scott, 2001). Richard Scott’s effort (2003) to synthesize the vast body of organizational study literature identifies three contrasting definitions of organization,

which are explained as follows in their chronological order in the evolution of organizational theories: the first defines an organization as a rational system of highly formalized collectivities oriented to the pursuit of specific goals; the second defines an organization as a natural system forged by consensus or conflict seeking to survive; and the third defines an organization as an open system composed of activities involving coalitions of participants with varying interest embedded in wider environments (Scott, 2003, p. 30). An application of the open system model, specifically, to the university will be discussed later in dissertation.

As for institutions, a simplified definition given by Scott (2001) says, "*Institutions* are composed of cultural-cognitive, normative, and regulative elements that, together with associated activities and resources, provide stability and meaning to social life" (p. 48). Like other efforts to define institution in response to the prominence of the organizational theoretical perspective, this statement is characterized by broadness and, unfortunately, vagueness. Institutions as a social phenomenon and institutionalism as a theoretical perspective have a much longer history than that of organizations and organizational theories (Turner, 1997, 2003). Connections between them emerged when the *new institutionalism* of the 1960s and 70s found it could not ignore the existence of organizations in modern society as a ubiquitous social structure. The new institutionalist theories that subsequently developed in economics, political science and sociology all have a theoretical branch that explains organizations (DiMaggio & Powell, 1991; Hall & Taylor, 1996; March & Olsen, 1989; Peters, 1999; Rowan & Miskel, 1998; Scott, 2001; Shepsle, 1989). The new institutionalism of sociology was particularly

developed for organizational studies (DiMaggio & Powell, 1991; Meyer, 2007). The institutional analysis of organizations as a theoretical perspective is distinct from an organizational theoretical perspective. The latter stays within an accepted organizational framework, treats the organization as an autonomous unit capable of interaction with other organizations and with its environment, and focuses on how organizations work and can be improved. The former examines the very formation of organizations and focuses on how institutions as social mechanisms constrain, shape, penetrate, and renew organizations. In this sense, the institutional perspective holds a critical and deconstructivist view¹ of organizations, and thus contributes significantly to organizational studies.

In higher education research, organizational studies are most prominent in the sub-areas of management and administration. An organizational perspective is even more pervasive, however, and is as reflected in how organization and institution are used interchangeably to refer to a college or university. The only recognizable distinction is that “[w]hile colleges and universities are frequently referred to as organizations, the use of the term ‘institution’ is more common, often intended as a synonym, referring to organization-wide constructs such as institutional leadership, decisions, or policies” (Gumport, 2000, p. 75). Gumport contends that the lack of distinction between these two terms “reflects reductionist thinking, where focusing on the organization reduces complexity to the point of oversimplifying what is problematic

¹ This deconstructivist view is exemplified in John Meyer and his colleagues’ analysis of the disconnection of organizational rationality with actual practice (Meyer and Rowan, 1997)

and at the neglect of historical patterns of rights and responsibilities that shape our lives” (2000, p. 75).

Although Gumport advocates for viewing higher education as a social institution rather than an agglomeration of individual organizations of colleges and universities, however, her own view of social institution cannot fully address her criticism of thinking of higher education as an industry, and demonstrates an affinity with an open-system organizational view. Gumport defines social institution as “an organized activity that maintains, reproduces, or adapts itself to implement values that have been widely held and firmly structured by the society” (2000, p. 73). She states that using the lens of “social institution” to examine the institutional imperatives for public higher education will help an observer see a wide array of social functions that have been expanded over time for educational organizations to carry out, including:

...the development of individual learning and human capital, the socialization and cultivation of citizens and political loyalties, the preservation of knowledge, and the fostering of other legitimate pursuits for the national-state. (Gumport, 2000, p. 74)

This list was expanded after WWII by adding “educating the masses, advancing knowledge through research, contributing to economic development by employing and producing workers, and developing industrial applications” Gumport comments that “[i]n this sense, shifts in societal imperatives reshaped expectations for higher education and redefined what activities are or are not recognized as ‘higher education’”. (2000, p.74)

After reviewing the expanded social functions of higher education across time, Gumport suggests that “an additional dimension of the historical proposition warrants

our attention” (2000, p.74). By this additional dimension, she means that as a social institution, public higher education “exists in an enduring interdependence with other social institutions -...the family, government, industry, religion, and popular culture,” which all “evolve in their interchanges with one another” (Gumport,2000, p.74) Taking into consideration recent trends that view higher education as key to economic development and political stability for being a source of human capital, technology and political legitimation, Gumport paints a gloomy picture:

It is entirely possible that, with the decline of public trust in social (and particularly public) institutions, there is a corresponding redefinition of expectations for public higher education as a social institution; as a result, the expected Parsonian pattern-maintenance and socialization functions may be receding, while economic functions may come to dominate the foreground” (2000, p. 74).

From Gumport’s statements above, with regards to seeing higher education as a social institution, we may reasonably summarize that this view does not prevent the encroachment of economic functions on the educating, cultivating, or socializing functions of higher education. In contrast to the perspective that sees higher education as simply and exclusively an industry, which contains “colleges and universities as quasi-corporate entities producing...goods and services in a competitive marketplace” (Gumport, 2000 p. 71), the social institution idea seems to have its value in reminding people of the many other social functions of higher education. In fact, Gumport (2000) argues that it is important for us to distinguish whether it is our talk and ideas about higher education that have changed, or whether it is the social functions of higher education themselves that may have changed. Implicitly she suggests that “public

higher education has not taken on principally economic functions, abandoning the more comprehensive institutional mandate of performing not only educational but also socialization and political functions” (p. 75). Her critical analysis of the mechanisms that converge in producing the university-as-industry view focuses on an “industry discourse” (p. 76), which is composed of a particular set of vocabulary and logics that shapes our way of talking about and thinking of higher education. In this way, Gumport’s criticism of academic restructuring seems to suggest a mindful use of language, and her call for the university-as-social-institution view becomes a form moral advocacy, intended to raise people’s awareness about the multiple “social functions” of higher education.

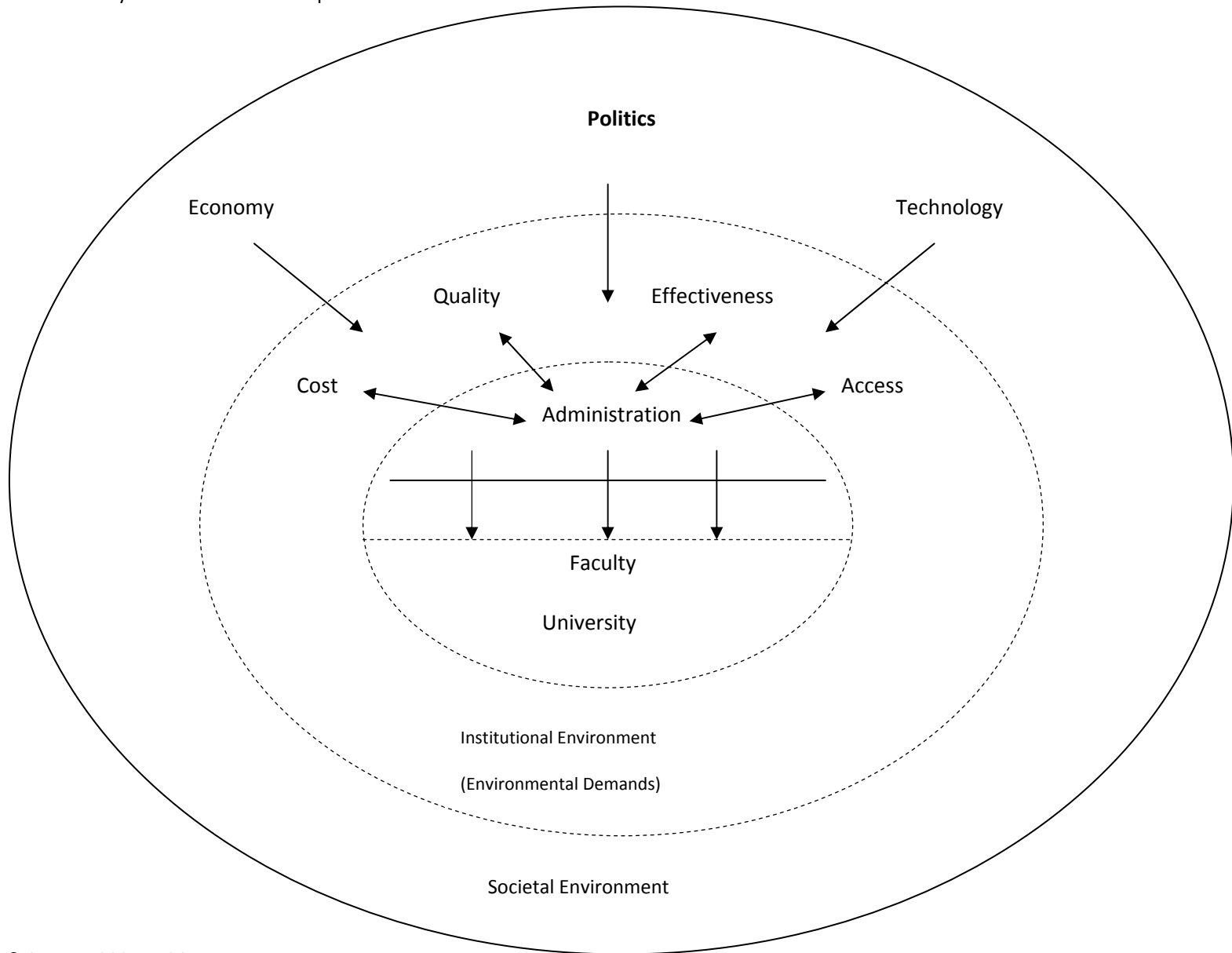
Gumport does not address how higher education should deal with the diverse and even conflicting expectations of society, if they, not expressed in the industry discourse, may still differ from or compete with the social functions that she has affirmed. Neither does she consider those social functions of higher education, less respectable than cultivating citizens, such as maintaining social stratification and cultural aspiration (Brint & Karabel, 1989).

By simply opposing society and higher education, Gumport conceptualizes society as an agent that generates values and demands, to which higher education should serve. This one-way relationship between society and higher education does not leave room to examine the shaping influence of higher education on society, or the former’s function in providing fundamental critiques of the latter. Society being a whole that exists outside of the university, Gumport’s analytical framework does not differ

much from an organizational theoretical perspective. The industry view pictures colleges and universities within a marketplace, while Gumport's social institution view has higher education within "society." In *both* the industry view and Gumport's social institution view, when "colleges and universities" or "higher education" are concerned, no matter whether the entity "produces goods and services" or "fulfills social functions," they interact with everything else in a rather flattened "marketplace" or "society." Both are consistent with the open-system theory of organization, which views organizations as situated in an environment.

In Gumport's critical analysis of the institutional adaptation of universities under the influence of organizational theories, she points out that "the literature on organizational adaptation is based on an open system perspective...and focuses on an analysis of the environment and management challenges" (Gumport and Sporn, 1999, p.104) Her analysis reveals that the prescriptions based on organization theories for institutional adaptation of the university either implicitly or explicitly call for an expanded role of university administration, which leads to a narrowed domain of faculty authority and an elevated role of administrators as the organizational agent of the university. Figure 1 illustrates this worrisome situation.

Figure 1: The Role of University Administration in Adaptation



In this figure, the university is located within an immediate institutional environment and a social environment. The abstract social forces of economy, politics and technology in the social environment exert pressures on the university. These pressures are translated into demands on colleges and universities within the institutional circle. Positioned at the periphery of the organization, administrators deal with the demands reactively or proactively, secure resources and satisfaction of clienteles, interpret the demands for faculty at the technical core of the organization, and coordinate various organizational reforms. It is difficult to tell how much Gumpert agrees with this open-system organizational model. It is also difficult to tell whether the process demonstrated in this figure is what is actually happening, or what could be happening if prescriptions of the organizational adaptation literature are followed.

However, we may find answers on our own from Gumpert's suggestions made at the end of her 1999 paper. Without questioning the heuristic model of the open system in Figure 1, Gumpert argues that successful adaptation should "be implemented through joint activities of administration and faculty," and "[t]hrough more involvement, decentralization, and networks which give back power and respect to professionals, the desired outcomes of organizational effectiveness and efficiency of the university would follow" (Gumpert and Sporn, 1999, p.145). From these suggestions, I would like to argue that Gumpert's criticism of organizational theories can be further developed. She takes for granted the organizational construct of the administrative position and faculty position, on which, she assumes, the respective collectivity of administrators and faculty is based. For this reason, she is able to argue about a power

struggle between administrators and faculty on the one hand, and suggests, on the other hand, their willingness to work together toward an organizational success. Will the university with a united front fare better in its demanding social environment rocked by uncertainties as well as competing and conflicting social needs? The union between faculty and administration has been called for across many decades – see, for example, Rourke and Brooks’ book on the campus management revolution in 1966. Why does it persist as a problem? If a solution continually fails to work, this suggests that we may have misidentified that actual problem.

Although critical of Gumport’s arguments, I share her concerns about academic managerialism, the sacrificed public functions of higher education, and diminishing faculty jurisdiction in the overall development of universities. I especially agree with her efforts and awareness in drawing a distinction between organization and institution, and her call for historical research on the growth of administration. As she hoped it would, her work has broken “new grounds for prompting empirical studies of how contemporary demands for management reform have far reaching consequences for organization of academic work and ultimately for the organization itself” (Gumport and Sporn, 1999, p.145). This dissertation is a response to her calling, except with a very different historical scope and a different institutional approach.

Next, I compare the organizational perspective of the renowned higher education scholar Burton Clark, and the institutional perspective of two equally well-established political scientists, Leon Epstein and Clyde Barrow. I will analyze how different perspectives lead us to drastically different understandings of university

governance and of the university's relationship with government and society. From this analysis, I produce my own definition of the institutional approach which I use in this dissertation.

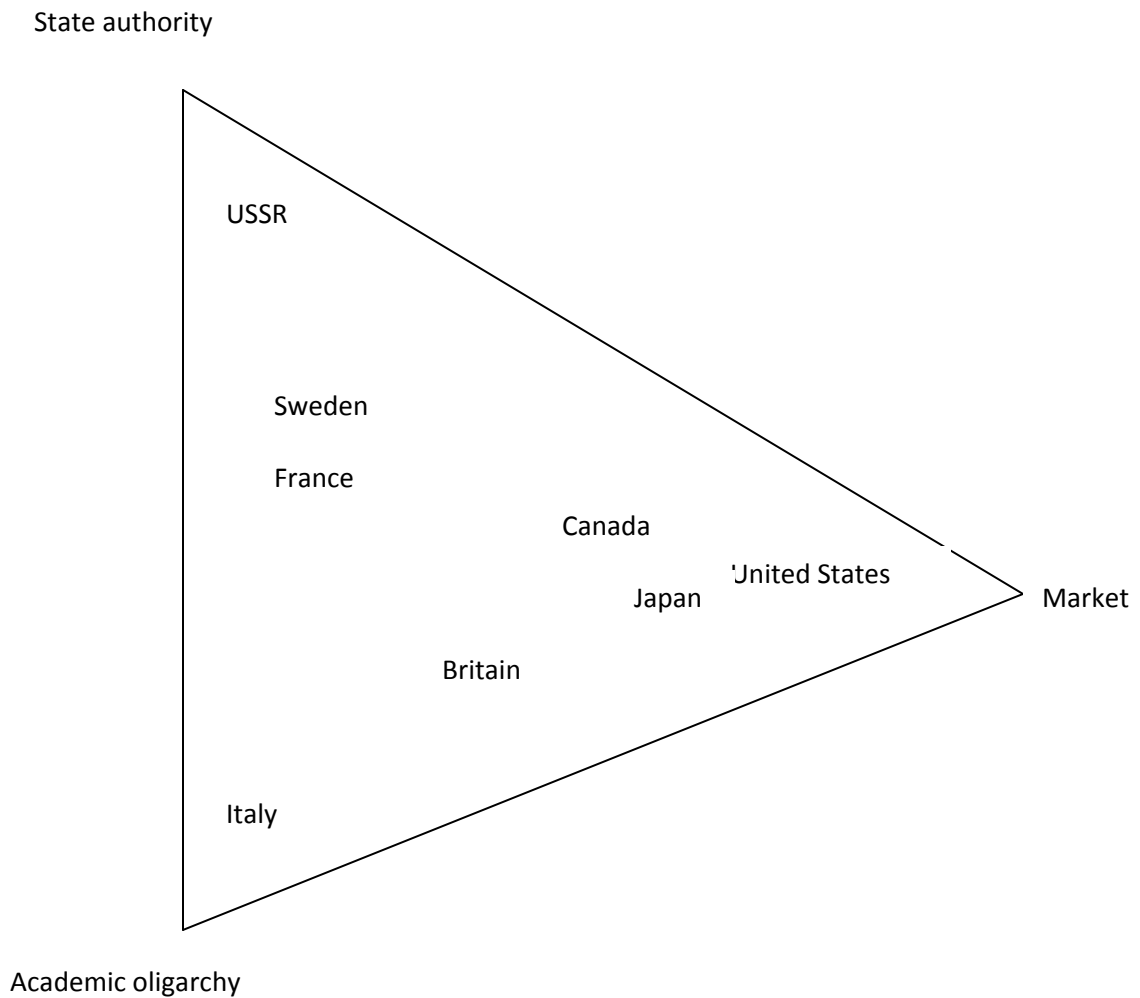
The most sophisticated version of the organizational approach is Burton Clark's classic comparative study of higher education system worldwide (Clark, 1983),² in which the uniqueness of the American higher education system stands out. Clark analyzes higher education governance as the distribution of different types of authority corresponding to three levels: *discipline*, *enterprise* (individual higher education organization) and *system*. He then classifies the national modes of authority distribution to three ideal types: the European continental mode as a combination of faculty guild and state bureaucracy; the British mode as a combination of strong faculty guilds with a modest amount of influence from institutional trustees and administrators; and the American mode as a combination of institutional trusteeship and administration with a much weaker faculty rule compared relative to the British mode.

In his triangle diagram of system-wide coordination types, Figure 2, Clark sets state authority, academic oligarchy and market at each end, and arranges the countries within this triangle.

² Clark explicitly claims an organizational perspective for his 1983 study of the higher education system worldwide (p.2).

Figure 2: The Triangle of Coordination

Clark, 1983, p.143



Clark maintains that “higher education systems vary widely between dependence on authority and dependence on exchange: the more loosely joined the system the greater the dependence on exchange” (1983, p. 138). On a one-dimensional continuum, one

end is “unitary and unified state administration” and the other end is “nongovernmental, nonregulated market-type interaction”³ (Clark, 1983, p. 138). A third prototype sees the replacement of the political-bureaucratic authority by professorial authority in certain countries.

Compared with all the other countries in Clark’s triangle diagram, the United States is closest to the market end and furthest from the ends of state authority and academic oligarchy. To explain this positioning, Clark (1983) provides two reasons. First, the U.S. system is characterized by the mechanism of the chartered corporation that produces “independently established units” (p. 129), and invests power in separate boards of trustees to take full charge of the institution. Second, faculty authority developed in as late as the twentieth century “within the context of the established powers of trustees and administrators, so the faculty forms of personal and collegial authority did not achieve the influence they had in the European and British modes” (Clark, 1983, p. 129).

These two factors contribute to a certain institutional autonomy from government control and the lack of influence from academic oligarchy. The U.S. higher education system thus consists of autonomous individual colleges and universities that

³ Clark sets state-system and market as two entities in distance to each other, which may develop relationships through different degrees of collaboration: “The continuum was one of decreasing state-system inclusiveness and of increasing market-type interaction, with such in-between combinations as federation, confederation, and coalition. Thus, in this broad meaning of market, it is synonymous with nongovernmental, nonregulated” (Clark, 1983, p. 138).

pursue their own ends through social choices,⁴ and form an exchange relationship⁵ in market-interaction. In contrast to bureaucratic, political and professional coordination processes, the market is the major integrating mechanism of the U.S. higher education system that coordinates individuals, groups and organizations. Unlike other processes, market coordination does not have a formal location or superstructure: “unregulated exchanges link persons and parts together” (Clark, 1983, p. 162). It is not a “centrally planned solution” but a “resultant rooted in the competitive interaction and voluntary imitation of autonomous institutions” (ibid., p. 138).

In Clark’s framework, universities do not have to assume social responsibility or be criticized for reproducing inequality, because they are strategic actors.⁶ Clark’s chapter on higher education’s social structure for the control of advanced knowledge focuses on the core task and technique of higher education organizations: the technical core in the language of organizational theory.⁷ Clark (1983) discusses the values, beliefs

⁴ Clark quotes Edward Banfield to define social choice as opposed to central decision: “A *social choice*...is the accidental by-product of the actions of two or more actors—‘interested parties,’ they will be called—who have no common intention and who make their selections competitively or without regard to each other. In a social choice process, each actor seeks to attain his own ends; the aggregate of all actions—the situation produced by all actions together—constitutes an outcome for the group, but it is an outcome which no one has planned as a ‘solution’ to a ‘problem.’ It is a ‘resultant’ rather than a ‘solution’” (Clark, 1983, p. 137).

⁵ “Exchange” is a basic form of interaction that stands in contrast to authoritative command; it can be seen as a method for organizing cooperation among people (Clark, 1983, p. 162).

⁶ Chandler (1962, p. 13) defines strategy as the “determination of the basic long-range goals and objectives of an enterprise, and the adoption of courses of action and the allocation of resources necessary for carrying out these goals.” Following logically, two sets of decisions that should be made are: (1) selection of domain—What businesses shall we be in? (2) selection of competitive stance—How shall we compete in each business? (Chaffee, 1985).

⁷ Leavitt’s (1965) diamond model of an organization depicts the elements of organization as social structure (composed of normative and behavioral structures), goals, participants and technology that interact with each other within the organization. The environment and the organization are separated by

and norms of higher education as the symbolic side of organizations for them to objectify and take the effects into consideration in their strategic action.⁸ Although this is consistent with Leavitt's classic definition of the social structure of an organization as composed of normative structure and behavior structures (1965) (See Footnote 7), from the market and strategic action view, the normative layer can be equated with the calculation of instrumental rationality. Not intended by Clark, the depiction of the American higher education system based on these organizational theoretical concepts lends justification to trends of commercialization, marketization, and privatization, as consequences of the resource- and prestige-seeking behaviors of American higher education enterprises in the market environment following the rule of exchange.

What presents an interesting contrast to Clark's conception is political scientist Leon D. Epstein's study of university governance⁹ (1974). Epstein focuses on U.S. higher education and does not necessarily agree with Clark, regarding the relationship between state authority, i.e., government, and the enterprise. He joins internal and external university government as subjects of analysis because separating internal and external

a boundary that is not sealed but, rather, sieve-like, hopefully admitting the desirable flows and excluding the inappropriate or deleterious elements. The "technology" is the function of the organization that justifies its particular existence, its core task.

⁸ Symbolic action is a theory developed in connection with strategic action (choice) theory. Symbolic action (Cameron, 1984) focuses on change in symbols, interpretations, and stories as opposed to change in structure and technology, which is emphasized by previous theories. Strategies that can be used in symbolic action include but are not limit to: interpreting history and current events, using rituals or ceremonies, using time and measurement to convey messages of priority, redesigning physical space to signal change, and introducing doubt to increase readiness for change (ibid).

⁹ Epstein actually uses the term university government instead of governance to highlight the subject in question as "the exercise of power in any political unit" (1974, p3). I use "university governance" here in a very generic way in order to compare different analytical approaches.

subject matter presents analytical difficulties, and further, he argues that the separation does not make sense empirically. “Whatever powers are held by external agencies must relate to those held within the university, and so must internal authority relate to outside powers” (Epstein, 1974, p. 2). He uses the state university as an example, contending:

The state university is not an island entirely cut off from the political mainland of state affairs. Nor is it at all likely to be cut off. Even “faculty government” in a state university is really state government in the sense that its authority derives from the state. (Epstein, 1974, p. 2)¹⁰

Epstein (1974) approaches the subject of university governance by examining the social arrangement and distribution of authority through plural “governing conceptions” (p. 7), such as state agency, trusteeship, managerialism, professionalism, collective bargaining, individual consumer sovereignty and organized student power. These conceptions are used as analytical models for Epstein to describe and question existing processes, which are treated as ideas or normative propositions, each with its own philosophical or ideological support and involving organized or unorganized interests that affect the validity of each conception. This best describes his institutional approach. Epstein explains that “[e]xamining each conception should tell us something, in the language of political science, about the legitimacy of the various claims to governing power in university affairs” (p. 7).

However, Epstein points out that organizing analysis along the lines of

¹⁰ Although Epstein uses these statements to argue for the necessity of studying the university governance of the 1960s, when universities became “major arenas of public controversy,” his arguments should apply to this dissertation also, as universities cannot enter those arenas all of a sudden.

conceptions of governance only partially fits constituencies or “sets of interests with claims to university policy-making power” (1974, p. 7). Although each conception indeed has “its champions mainly in a given constituency” and each “reflects the interests of a constituency and the ways in which its members pursue their interests within the university...a conception may be identified with more than one constituency” or “constituencies may form alliances in pursuit of their interests” (Epstein, 1974, p. 7). With this consideration, Epstein’s analysis is not constrained by an organizational framework that thinks in terms of roles and positions, and boundaries between organization and its environment.

Political scientist Clyde W. Barrow (1990) presents a view of the state that challenges the location of state authority in government by both Epstein and Clark. Barrow differs from Epstein in his use of an institutional approach by doing a historical study, and examining the collective interests behind institutional construction through the lens of class. Using a comparative and historical perspective, Barrow contends that capitalist states should be understood as “specifiable institutional networks,” composed of “historically different, even if comparable, patterns of organization” which centralize or diffuse power in relation to society (1990, p. 6). In this view, state power and political structure should not be conceptually “identified merely with classical definitions of government” (Barrow, 1990, p. 4). State power refers to the state’s political capacities to “extract resources legitimately through taxation, to administer polices through bureaucracies, and to control or directly regulate group conflicts through courts, regulatory agencies, police, armies, and schools” (Barrow, 1990, p. 6) The resulting

political structures “shape and limit state interventions in the economy, and they determine ways in which class interests and conflicts get organized into (and out of) politics in a given time and place” (p. 6).

Based on the above conceptualization of the state, Barrow examines the historical construction of the American university as an “ideological state apparatus” that is part of the “much larger social and political struggle that accompanied the building of a corporate-liberal state in America” (p. 7). Focusing on the relationship between the state, capitalism and university, Barrow continues the legacy of Thorstein Veblen by bringing into the picture the business sector and the production relationship absent in Clark’s model, thus revealing the social structures of American society in which the university is situated as a social institution, instead of an autonomous individual organization. Barrow also differs from Epstein in a significant way. Epstein focuses his examination on the legitimacy claims of various conceptions. Barrow does not take for granted these claims justified in the framework of the American polity, but employs a historical method to examine with a more open structure the historical process of a particular institutional setup – for instance, interlocking directorship, and survey movement. The historical narratives introduce the agents, their mechanism of exerting social influences, the development of justifiable rationales, and the establishment of structures to perpetuate selected practice. Based on this historical understanding, the influence and functions of a particular institutional setup, and collective interests can be discussed. Such a historical institutional approach provides an organic way to examine institutional functions and relationships. It enables us to take a look at the functions of

the university beyond what are claimed as legitimate, and helps us achieve an understanding of how the social structure shapes the university and its functions.

What is questionable about Barrow's class analysis, however, is that he associates interest and motivation with categories *a priori*; for example, engineering is equated with industry which is equated with capitalist interests (engineering = industry = capitalists). Although Barrow's historical perspective, his inclusion of the production relationship in his analysis, and his argument about the state's indirect but nevertheless forceful steering of universities are enlightening, his association of historical figures with prior sets of collective interests is worth re-examining.

So what is a social institution and how should we define it? Generally speaking, an institution is a relatively permanent social structure that "provides stability and meaning to human life" (Scott, 2001, p. 48). Friedland and Alford (1991) state that institutions must be conceptualized as simultaneously material and ideal, systems of signs and symbols, rational and trans-rational. Each of the most important institutional orders of contemporary Western societies – capitalism, family, bureaucratic state, democracy, and Christianity – has a central logic which constitutes its organizing principle and which is available to organizations and individuals to elaborate. These institutional logics are symbolically grounded, organizationally structured, politically defended, and technically and materially constrained, and hence have specific historical roots and limits. The conflict and contradictions of these institutional logics create dynamics, threaten the stability of institutions and foster changes. Necessarily, then, the study of institutions must include an approach attentive to process that examines

institutionalization as an institution's creation, maintenance, diffusion, dissolution and change. Similar elaborations intended to exhaust every aspect of an institution can be seen in quite a few scholarly works (Scott, 2001; Thornton & Ocasio, 1999).

A very comprehensive definition often has the disadvantage of losing focus and specificity. Neither can it really be the guide for one study. What I wish to highlight here as guiding my dissertation research are the following points. First, as argued before, the perspective that sees the university as a social institution should be distinct from the one that sees it as an organization. Although modern society is often called an organized society (Scott & Meyer, 1994; Scott, 2001), in which formal organization is acknowledged as a ubiquitous phenomenon, studying organizations and studying from an organizational perspective can be profoundly different. Second, institutionalism in recent decades generally has an emphasis on the shaping influence of social institutions on people's way of thinking and perceiving, no matter whether this influence is named legitimacy (Meyer, 2007), logic (Friedland & Alford, 1991), or a cultural-cognitive pillar (Scott, 2001). What this trend reflects is an understanding that social structures reproduce and perpetuate themselves such that they appear logical and functional; indeed, studies of social structure through the accounts of history are capable of presenting and revealing the arbitrariness of contemporary social forms (Bender, Hall, Haskell & Mattingly, 1980; Steinmetz, 2008). As a result, how reasoning is developed, presented, reacted to, and institutionalized in social practice becomes the focus of an institutional analysis. Third, an institution is both ideational and material. The logic, principle, reasoning, legitimacy, etc., go through an institutionalization process to

become embodied in permanent social practice through particular infrastructural setup and material maintenance. These three points provide guidance to my institutional analysis in this dissertation.

Conceptual and historical contexts

Higher education historians consider the turn of the 19th century (Reuben, 1996; Barrow, 1990; Rudolph, 1992; Vessey, 1965) and the 1960s (Ladd and Lipset, 1975) as two turning-points in the history of American universities. The former period witnessed the rise of the American university at the same that society was transformed by organized modernity and corporate capitalism (Hall, 1984; Perrow, 2002; Sklar, 1988; Weinstein, 1981). In the latter period, the university was transformed yet again as society entered a post-modern and post-industrial stage, and the nation-state began to decline (Delanty, 2001; Readings, 1997). In accordance with such an understanding, the subject of Gumpert's and Clark's analyses is the American university in its post-modern condition; Barrow focuses on the formation of the modern American university; and Epstein examines the university through its transition period from the modern to post-modern conditions.

As discussed earlier, Gumpert's concerns regarding university management, the university-business relationship, and the shared governance of faculty and administration are concerns that have been raised by previous scholars. The limited scope of Gumpert's historical perspective creates obstacles for us to fully understand the origin of contemporary university conditions. By paying more attention to this

socio-historical context, I find that different analytical approaches based on organizational and institutional perspectives can lead us to contrasting findings about university governance and the relationship of university, state and society. After having decided on a historical and institutional approach, I select and collect materials regarding the University of Michigan case that allow an in-depth analysis of the origin of university governance and management, and the formation of the university, state and society relationship. Working on these materials brings home the necessity of clarifying from a historical perspective what exactly one means when using terms such as “corporation,” “public” and “private.” For this, I draw primarily on the studies of Brody (1935), Duryea (2000), and Habermas (1993). Although my reference to these studies does not form a theoretical framework to guide or structure my analysis and interpretation per se, the historical review of the concepts of corporation, public and private together with their material basis and institutional practice is indispensable to make sense of the Michigan materials and find a relevant connection between them and the present university conditions discussed by Gumpert and Clark.

Organization of the Dissertation

The UM history examined in this dissertation focuses on 1) the battle over the installation of a homeopathy professorship and later a homeopathy school, a battle which spanned the second half of the 19th century and led to the confirmation of UM’s constitutional status by the Michigan Supreme Court; and 2) the establishment of the business management system and a business office, a process that unfolded over three decades in the first half of the 20th century. This dissertation is composed of six

chapters including the chapter of introduction.

In the next chapter, Chapter 2, I provide a historical and conceptual context for the history of UM examined in this dissertation. Specifically, I review first the evolution of corporation and its legal significance to the structure of modern society; second, the emergence of society and the conceptualization of civil society and the public; third, the establishment of American public universities. Against the above background, I introduce the creation of UM. What it meant for this establishment to be “public” and a “university” was conveyed in its early design, constitutional and statutory stipulations, and methods of financing. Chapter 2 provides the background necessary for the reader to understand the following chapters on the UM history, especially the homeopathy disputes in Chapter 3.

Chapter 3 covers the famous homeopathy battle between the State of Michigan, the University and the medical profession for almost half a century, from the 1850s to the 1890s. On the issue of installing a homeopathic professorship in the Medical Department of the University, various actors employed different maneuvering strategies through the mechanisms available to them, and expressed their opinions on what constituted university instruction, how the university should be operated, what the university’s social obligations were, and how to interpret the constitutional clause of entrusting the power of internal management of the University in the Regents. By incorporating historical studies of homeopathy and the American medical profession, and histories written by homeopaths, this chapter brings the University back into the broader society, and examines its position in a complex institutional system and the

implication of its governance structure.

Chapter 4 turns our attention to the internal management of the University, and describes the transfer of the management power from the Regents to the executive officers, i.e., the president, vice presidents, and business managers. This transfer of management power resulted in considerable changes within the University's management and its organizational structure, manifesting especially in the creation of the business office and business management division of the University.

Chapter 5 presents a history of how university business administration has been variously conceptualized, especially by the Association of Business Officers of the State Universities and Colleges of the Middle West, whose members developed operational methods of university business administration to implement on their campuses. Relying on historical studies of industrial management and firm management, and histories of accounting methods, this chapter presents the connection and affinity of university business management methods with those in the industrial and business sectors. Based on such an understanding of the new system of business management, this chapter analyzes its impact on University governance and operation.

Chapter 6 synthesizes the analyses in previous chapters and provides a conclusion together with a discussion of avenues for future inquiry.

CHAPTER II

FROM HISTORY AND CONCEPT OF CORPORATION AND THE PUBLIC TO THE BIRTH OF THE UNIVERSITY OF MICHIGAN

As explained in Chapter 1, this dissertation is an effort to dialogue with scholars about the problems encountered by current American public universities, while making an argument that a historical study is necessary in order to understand the relational position of the university in the society. With an audience of higher education scholars in mind, and after an examination of the historical materials, I find it is crucial to clarify two key concepts: corporation and the public.

The corporate form provides a critical legal foundation to the governance of American universities (Duryea, 2000). This particular governance set-up decides what influences may take effect on the universities. For instance, as mentioned before, Clark (1983) uses the corporate nature of American universities to explain their institutional autonomy from the state control, and the investment of power in the board of trustees instead of faculty. He further infers that American higher education system is coordinated by the marketplace instead of state bureaucracy or academic oligarchy. Heinz-Dieter Meyer (2009) argues in his comparative historical study of Germany and the U.S. that the institutional autonomy of American universities from state control made them more open to the influence of the business world, and especially enabled

them to benefit from the philanthropic efforts of culturally-aspiring businessmen. In addition to charitable giving from the business world, American universities also appear open to its management methods, which leads to Gumpert's criticism of the harmful influence of corporate model on the universities. In short, the corporate nature of American universities seems to connect them closely with the business world. To many higher education scholars, the corporatization of the university is examined as a post WWII phenomenon with negative connotations for being associated with industry, business, management, and a weakened role for faculty role (Gould, 2003; Lazerson, 2010; Ross, 2010). With the exception of Meyer's more positive view of business influence, many scholars see this connection as transforming university service and knowledge into commodities and jeopardizing the function of universities in benefiting the public and providing public good.

The above perception is not surprising. Ever since the late 19th century, business has used the corporate form so well to its benefit, and business corporations have become such a powerful organizational force that today, business corporations seem to be the major, if not only, signifier for corporation. Historically, however, in the family of corporations that can be traced back to the 12th century, business corporation was actually and originally the younger brother of university, church, municipality, and other incorporated social associations. But business corporation gained such a visibility through the 20th century that it has become the representative of the corporation

family, and corporation tends to be used synonymously to refer to business corporation.¹¹ When the corporate nature of the university refers mainly to its resemblance with business corporations as the consequence of “corporatization,”¹² the corporation as a product of the rise of nation-state to sanction associations may be overlooked as a key factor in the institutional autonomy of the university (Duryea, 2000).

The “public” is yet another term used in often confusing ways. It may refer to the state authority, the general population, an aggregation of individual citizens, or sometimes to interest groups claiming that their interests represent fundamental rights (Jepperson & Meyer, 1991). In the case of the University of Michigan, its constitutional status protected it from the state control, but directly subjected it to the people of the Michigan. Does this mean there are two publics, one vested in the state government as a public authority and the other in the people as the general public? Are businessmen part of the people of the Michigan, and therefore, should their business operations be served by the University? When the University borrowed business management methods from the business world in order to improve its operation efficiency, was its

¹¹ This is, for example, the usage of the term “corporation” by interviewees in the 2003 documentary, *The Corporation*, despite the recognition at the beginning of the documentary that there are many kinds of corporations in the world, including the church, university, and the Chinese Communist Party.

¹² According to Eric Gould in *The University in a Corporate Culture* (2003): “The corporatization of higher education takes many forms but includes the following: quality management criteria and strategies drawn from the world of business; an emphasis on marketing, visibility and public image promotion; accounting concerns for contribution margins and the perennial cost effectiveness of learning; decentralized power structures with incentives for growth and gain share revenues; the redistribution of labor...; the development of sophisticated ancillary products, patents, and services; a vague rhetoric of excellence that replaces specific details of what an education is about, and, of course, research and other financial collaborations with the corporate world” (31).

public-serving function hurt or advanced by the business influence through a corporate model?

These questions and the confusion they reveal suggest that it is necessary to clarify the concepts of corporation and the public, and that any approach must necessarily be historical. In this chapter, I review the history of corporation, and the historical conceptualizations of the public, particularly as illustrated in the Dartmouth College Case in 1819, which then formed the context for the establishment of American public universities. With this historical and conceptual understanding, I will then introduce the creation of the University of Michigan.

Corporation till the Dartmouth College Case in 1819

The idea of corporation has had a long evolution. Roman law developed the conception of corporations as fictitious legal entities when Roman emperors delegated limited authority to private groups to “conduct a specified activity outside the state’s administration but under its sovereignty” (Duryea, 2000, p. 4). Since the Middle Ages, incorporation has been an important means for the supreme power – whether the church, crown or modern state – to exert its authority and control over associations for various purposes. At the same time, it has also served as a shield for these associations to maintain a certain degree of autonomy over internal affairs. External control and autonomy over internal affairs both hinge on the corporate form, and their interactive and dynamic relationship results in variations of power balance.

In this dialectic way, the corporate form connects the campus and the capitol for

colleges and universities. After more than two decades' study of academic corporations, Edwin Duryea (2000) notes that as chartered corporations, colleges and universities in the United States enjoy more freedom from extensive governmental supervision than their European predecessors. He points out that a constitutional and established legal system enforced by courts in the United States has made this possible, while at the same time, academic autonomy in this country "does not belie the sovereignty of federal and state governments" (Duryea, 2000, p. xiv).

In higher education studies, although there is a large body of literature on college and university governing boards, only a few systematically examine the corporate form as an institutional arrangement that employs a governing board. The publications of Alexander Brody in 1935 and Edwin Duryea in 2000 are such exceptions. Both authors conduct a historical and legal study of the corporate form of American colleges and universities. They both trace the early history of the corporate form and its development in Europe, and then examine its various applications in contemporary American colleges and universities. Brody focuses on state universities, and examines the corporate form as a multi-purpose tool for public authorization, public control and also protection of universities' internal affairs. Duryea includes both private and public colleges and universities in his study, and focuses on the institutional autonomy provided by the corporate form as embodied in the college and university governing board.

Brody (1935) produces a succinct historical review of the conceptual and institutional development of corporation in Europe, especially in relation to universities,

which helps us to understand the legacy inherited by their American counterparts. According to Brody, corporation received its organic meaning in the Middle Ages in Europe, when common interests and activities formed “organic association for mutual help and advantage” (Brody, 1935, p.1). “Participation in the life of a social unit was recognized as a public right” (p. 1). The corporate life enjoyed a recognized freedom, and the group “was conceived as an organic unity with an inherent life of its own” (p. 1). Such corporate autonomy was a result of the lack of ultimate authority in medieval society, where still little known was “the conception of sovereignty as a supreme power lodged somewhere within the state” (Brody, 1935, p. 2). “Universitas,” the Latin word meaning corporate body, was used to refer to all corporations, religious, commercial, philanthropic or educational. This generic meaning was lost with the rise of the modern unitary state as the depository of supreme authority.

When the nascent modern unitary state struggled with the church and the papal claim for exclusive dominion, it was the Catholic Church that first used corporation to increase its power and claim its authority. Faced by the threat from the rising state power, Pope Innocent IV (1243-1254), an eminent jurist and canonist, reached back to the Roman law of corporation for a juristic redefinition of the ecclesiastical power. The Innocentian doctrine stated that each church domain, such as “Cathedral chapter, Collegiate church, religious fraternity, university, etc. is a ‘Universitas,’ i.e. a free corporation” (Brody, 1935, p. 3). In order to effectively affirm the claim of papal supremacy, all intermediate church organizations were treated as creations of the Pope. The associations existed not by their own strength, but derived their life from the

church as a whole. From this practical political reasoning was deduced the theory of corporations as fictitious. The nuance added to the definition of corporation was explained by Brody as follows:

[I]ts (corporation's) existence, its personality is not something real, not a "natural" fact expressive of a collective body; rather its personality is purely "fictitious." It is merely an artificial notion invented by the sovereign for convenience of legal reasoning. In short, the corporate life of the group is not a social reality, but a legal conception – a "*nomen juris*" which exists only in contemplation of law. (p. 3)

Brody points out that "the juristic implication of this doctrine was the denial of the independent life of free corporation" (p. 4). The corporation derived its legal status "not from the intrinsic fact of its existence but from extrinsic fact of the sovereign's will" (p. 4). Brody adds that "[w]hatever the sovereign may create, he may also destroy" (p. 4). It was this sovereign alone that gave the corporations their constitutions and prescribed their regulations.

This theory to establish papal sovereignty soon also became the basis for the theory of royal sovereignty. The medieval universities were "obliged to seek an affirmation of their existence in the form of a charter or constitution from Prince or Pope" (Brody, 1935, p. 5). However, since there was not yet one central authority, the universities suffered little interference with their internal affairs, and they "were still conceded the right of political participation in the collective authority of the medieval state" (p. 5).

With regards to a recognizable corporate form, Duryea (2000), citing Hastings Rashdall (1936), describes the evolution of the University of Paris in the 13th century, during which period, four crucial steps gave the customary meetings of masters for

various university functions the character of a definite and legally recognized corporation. The four steps were:

“(1) the reduction of their unwritten customs to the form of written statutes or by-laws, (2) the recognition or...the exercise of the right to sue and be sued as a corporation, (3) the appointment of permanent common officers, (4) the use of a common seal” (Rashdall, 1936, p.299).

With both papal and royal support, by the second half of the 13th century, the University of Paris was considered “an academic corporation, an autonomous and self-sufficient association,” and by the 14th century, its members enjoyed the reputation as “influential actors in political as well as ecclesiastical affairs of Europe” (Duryea, 2000, pp. 18-20).

Not only Prince or Pope can enfranchise corporation to claim domain of authority, the incorporated bodies can also use the enfranchisement by one power to protect themselves from the control of other powers. For instance, in the 13th century, Oxford and Cambridge gained papal recognition as incorporated societies (Duryea, 2000, p. 21). Respectively, the masters at each university took action to free themselves of episcopal oversight by soliciting papal support, or even forging it in Cambridge’s case, to restrict the jurisdiction of chancellor and bishop over members of the university, and to weaken the bishop’s role in appointing chancellors. “By the middle of the fifteenth century, both universities had become autonomous corporations with elected chancellors” (Duryea, 2000, p. 23). Duryea points out that the success of the university masters in gaining autonomy can be partly explained by the dispersed nature of society at that time.

This “dispersed society” changed in the 14th and 15th centuries when state power expanded significantly. Theories of civil government emerged with claims that “the

church was a state institution, only the state can authorize ecclesiastical foundations and corporations, education is exclusively the state's affair," and that "church property is the property of the state" (Brody, 1935, p. 5). In the 16th century, the Protestant Revolution was followed by nationalization of the church, which transferred to the state the functions of education and charity. The transfer of power is demonstrated in the history of the University of Paris. In 1446, Charles VII placed the renowned University of Paris under the control of agencies of the French state (Duryea, 2000, p. 20). In 1573, "the Parliament of Paris adjudged the University of Paris to be a secular and not an ecclesiastical corporation" (Brody, 1935, p. 6). Brody points out that this event is "particularly significant in the legal evolution of European universities because it marks the beginning of the substitution of civil for church control" (1935, p.6). A financial consequence for the universities was that they had to look more and more to royal support.

The 16th century also witnessed the spread of Roman law across the continent of Europe, the revival of civil law, and the political conception of the omnipotence of the state. The unitary state claimed complete sovereignty. No forms of association could be legal unless they derived their power from the positive sanction of the supreme power of the state. This historical context provided the practical ground for concession theory, which stated that "corporate existence is a privilege conceded by the state" (Brody, 1935, p. 6).

In contrast to the practice of conceding privilege to corporate existence, sub-governmental bodies emerged to replace the abolished old corporations and "serve as

organs of a nationally organized society” (Brody, 1935, p. 8). In France, the University of Paris was suppressed in 1793 together with other French universities. Napoleon I established the Imperial University in 1809 as a central government body to oversee the entire national education system. In Germany, the universities were founded by the governments as state institutions to train officials for civil and spiritual administration. Duryea (2000) observes that it was in England that “the corporation in general and that of the universities in particular matured to that which we know today” (p. 31).

In the 16th century, Henry VIII broke England away from the Roman Catholic Church. While removing the Pope’s influence in English affairs, he issued two decrees in 1533 and 1534 asserting royal dominion over all ecclesiastical societies, including the universities. In 1571, Queen Elizabeth obtained from Parliament a statute which first withdrew universities’ charters and then reissued them to reaffirm the supremacy of the Crown ¹³ (Duryea, 2000, p. 38). The Crown maintained oversight of the universities, suggested candidates for college heads or sometimes simply made appointments, and dispatched committees of visitors to the universities. The universities were not spared of nepotism, which means that proximity to the throne enabled the attendants in the Court to “obtain fellowships and offices, excuse students from fulfilling degree

¹³ The statute that recognized the corporate status of the University of Oxford declared: “...the chancellor of the University of Oxford and his successors forever, and the masters and scholars of the University of Oxford for the time being shall be incorporated and have perpetual succession in fact, deed and name, by the name of the chancellor, Masters, and Scholars of the University of Oxford” (cited in Brody, 1935: 10). It is notable that this statute chartered both the chancellor and the masters and scholars, in distinction from the American practice which chartered the board of regents or trustees as the body corporate. From the secondary sources I have consulted, it is not clear about the origin and evolution of the governing board in universities as an institutional setup.

requirements, grant leaves of absence, and award positions of prestige to individuals and to the families from whom the Crown could expect support” (Duryea, 2000, 57-58). In brief, the Tudor monarchs in the 16th century “demonstrated effectively the central character of the English corporation as a concession and thus an obligation to royal sovereignty and its integration with the political machinery of the state” (Duryea, 2000, p. 43). Nevertheless, royal control was weak, and the “political machinery of the state” was only budding. For these and other reasons, English universities largely preserved their medieval autonomy.

While the corporate practice evolved along with the emergence of the nation-state, the legal concept of corporation developed significantly from the 15th to the 17th century (Duryea, 2000). By the middle of the 15th century, jurists began to make a distinction between corporations and unincorporated groups, and between the rights and responsibilities of the corporation and those of its individual members. The fictitious personality of the corporation that we take as common sense today was grasped with difficulty in the 15th century as a concept still outside of experience to “both participants in such enterprises and lawyers” (Duryea, 2000, p. 52). The corporation has personality because it can sue or be sued, receive and hold property like a living individual. But it is also fictitious, as famously depicted by the renowned British jurist Sir Edward Coke (1552-1634) in his judgment for the Sutton’s Hospital case (1621), a seminal common law case in corporation law: “Corporation aggregate of many is invisible, immortal, and resteth only in intendment and consideration of the law...They may not commit treason, nor be outlawed, nor excommunicate, for they have no souls,

neither can they appear in person, but by Attorney” (Sheppard, 2003).

The corporation is thus imbued with ambivalence from its early history. It acts as determined by its members, but it has a life separated from its members, for the responsibility of its action cannot be attributed to any one of its members. It depends on the state franchise for its existence, but it functions separately from the state. The ambivalence between corporate privilege and social responsibility, corporate autonomy and state authority, provides ample space for competing interpretations and potential tension in the dynamic state-corporation relationship.¹⁴

In the 16th century, business corporations arrived on the stage to become a prominent corporate entity. The evolution of corporation was considerably affected by chartered companies, which mushroomed to seek wealth in the new worlds opened up by exploration (Micklethwait & Wooldridge, 2003). In fact, corporations grew and prospered in commerce, trade and, later on, business, where their power and capability came into a full play, oftentimes in a way hackles raising. A good example is the East

¹⁴ The complexity of corporation was gradually brought into further play by the Common Law, which rose in England in the 17th century and traveled to the American colonies (Duryea, 2000; Micklethwait and Wooldridge, 2003). Sir Edward Coke as the earliest jurist that laid down the foundation for the Common Law used it to circumscribe the arbitrary power of the King and to establish the doctrines of individual liberty and rule of law (Berman, 1994). Coke “discussed the inherent rights of corporate status, rights which the law automatically assigned even if they were omitted in the charter raising the corporation” (Duryea, 2000, p. 52). This mentioning of the “inherent rights of corporate status” seems to justify the existence of corporation beyond the external sanction of the Crown. Although I cannot provide an in-depth discussion of the historical relationship of corporation and the Common Law, it is beyond doubt that what shaped corporate law most significantly has been judges in the Common Law system. The historicism established by Coke (Berman, 1994) recognizes the normative binding of historical origin as reflected in precedence, which contributed to the U.S. courts’ recognition of charters granted during colonial time, typically in the Dartmouth College ruling by Chief Justice Marshalls.

India Company, chartered in 1600, which became “[t]he grandest society of merchants in the Universe,’ possessed an army, ruled a vast tract of the world, created one of the world’s greatest civil services, built much of London’s docklands,” existed for 274 years, and remained powerful for more than 200 years (Micklethwait & Wooldridge, 2003, p. 21). In the cases of the Mississippi and South Sea companies, they “bilked thousands of investors of their money” and left France and London in financial mayhem (p. 33). Later, in the second half of the 19th century, giant business corporations arose in the United States ahead of other industrial countries in the world. These corporations monopolized various trades, transportation, and production, and gave power to the “robber barons” – 19th century industrialists, businessmen and bankers.

In their book on the history of the company, Micklethwait & Wooldridge (2003) point out that the company was a political creation, the product of a political battle, and that companies also “plainly had a political and social impact in the societies that spawned them” (p. 54). This statement applies to all types of corporations, not simply to joint-stock companies of limited liability as one kind of corporate form. This broader subject must have been contemplated by Micklethwait and Wooldridge because in a subsequent passage, in which they quote Peter Drucker to make a point regarding the significant implication of this “new sort of organization,” they refer to a variety of corporate forms:

This new ‘corporation,’ this new Societe Anonyme, this new Aktiengesellschaft, could not be explained away as a reform, which is how the new army, the new university, the new hospital presented themselves. It clearly was an innovation...It was the first autonomous institution in hundreds of years, the first to create a power center that was within society yet independent of the central government of the

national state. (2003, p. 54).

To achieve this capacity, the corporation had to go through its journey in a new continent. Micklethwait and Woodlridge comment that chartered companies in the American colonies “played a more enlightened role” by introducing the concept of contract between the ruler and ruled and representative democracy into their practice (p. 34). In addition to the chartered companies, “[t]he early American states used chartered corporations endowed with special monopoly rights, to build some of the vital infrastructure of the new country – universities...banks, churches, canals, municipalities, and roads” (p. 43). American colonies and later the United States opened distinctively new chapters for the corporate form. Perhaps the most important case in the history of corporation, particularly for colleges and universities, is the 1819 landmark Dartmouth College case ruling. It was in this case that the concession theory of incorporation was replaced by the social contract theory. More details of the specific case should help us better comprehend this transition.

Dartmouth College was established by Congregational minister Eleazar Wheelock in 1769 upon a charter granted by the governor of New Hampshire under the authority of King George III. Its funding came from money raised in England when it was established, and land granted by the state government after the Revolution (Sullivan, Jr., 1998). Because of a dispute over whether the authority to run the college should reside in the president or the board of trustees, President John Wheelock invoked legislative help to investigate this affair in 1815. The infuriated Trustees removed Wheelock as president, professor and trustee. Pleading on the importance of the College to public

welfare and the authority of the state government to oversee “the literary establishments” (Brody, 1935, p. 34), Wheelock sought the support of the New Hampshire governor and legislature. In one of Governor Plumer’s messages to the legislature, he wrote, “The college was founded for the public good, and not for the benefit or emolument of its trustees, and right to amend and improve acts of incorporation of this nature has been exercised by all governments, both monarchical and republican” (Brody, 1935, p. 35). Adopting Plumer’s suggestions, the legislature passed law to change the name of the college to Dartmouth University, place the ability to appoint trustees in the hands of the governor, create a state board of visitors, direct the president to report university affairs and finance to the governor, require the president and the professors to take an oath to support the Constitutions of the United States and New Hampshire, and stipulate perfect freedom of religious opinion on campus. This was nothing short of a complete transformation of the college charter and turning it into a state-controlled public college.¹⁵

Claiming the legislative action unconstitutional, the trustees took the case to the New Hampshire Supreme Court in 1817. The court ruled that Dartmouth College was “a public corporation, and its trustees were public officers responsible to the people and therefore subject to legislative control” (Rudolph, 1992, p. 209). The charter of the College was not considered a contract.

¹⁵ This “state control” should not be understood as a control over college affairs per se. Brody (1935) points out that the intention of the state was not to take control of the college, but to secularize it and make it more responsive to civic needs through stipulating state representation on the board.

The Trustees then took the case to the U.S. Supreme Court, where a 5-1 divide in 1819 ruled in their favor, “with one abstain” (Rudolph, 1992, p. 210). Speaking for the court, Chief Justice John Marshall recognized that Dartmouth College was a private eleemosynary institution with an object to benefit the public, but was not a public institution under public control, nor was its property public property. The charter of the College was a contract between a corporation and the government to be protected by the Contract Clause of the U.S. Constitution.

Brody (1935) compares the arguments of the attorney for the state and those of Justice John Marshall (pp. 36-38). The former reasoned that higher education was a public function left to the states according to the U.S. Constitution; the charter of the College was granted by the Crown but was also subject to the latter’s modification or repeal; the charter was a grant of a public nature for public purpose; the State of New Hampshire then would “have the power to change or modify a charter granted to a public corporation for public purpose” (p. 37). These arguments asserted a historical continuity between the British Crown and the State of New Hampshire, such that “[t]he power of modification or repeal of charters granted for public purposes is a recognized prerogative of sovereignty” (p. 37).

In contrast to the above argument that justified the state authority over higher education as a public function, Webster, the attorney of the Trustees, and John Marshall focused on the inviolability of property right and of the contract between the state and

individuals – in this case, a corporation, protected from state power by “the additional limitation imposed on the states by the United States Constitution,”¹⁶ irrespective of “[w]hatever may have been the rights of the British Crown over the charter under the old government” (Brody, 1935, p. 37). The ruling also confirmed Webster’s argument that the funds and property granted by the state to the college were the property of the latter, and that the state cannot claim the right to regulate or control the disposition of the funds or property by reason of its granting.

The Dartmouth College ruling made the colonial colleges inviolate, and consequently spurred a movement for the creation of privately endowed colleges and universities. As an unexpected effect, the ruling also encouraged the establishment of companies. Because it rendered colonial colleges independent from state control, it became a major factor that motivated the state to create public colleges and universities under state control, while the corporate form and individual autonomy became a legacy adopted by these new higher education members. In the next section, the implication of this ruling will be further discussed in light of the conceptualization of “the public” in a historical process.

The Formation of the Public – Private Dichotomy

The Dartmouth College case ruling exhibited the influence of John Locke’s social

¹⁶ The Contract Clause in the United States Constitution, Article I, section 10, clause 1: No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

contract theory on American law. Simply put, the social contract theory states that the legitimacy of the government comes from the consent of the governed. The people give up sovereignty to the government in order to maintain social order and secure their inalienable natural rights – life, liberty, and property – through the rule of law. In this sense, the relationship between the people and the government is a contractual one based on agreement. Meanwhile, theories about natural rights demand that limits be put on the coercive power of state.¹⁷ Corresponding to the social contract theory was the broader historical context of England and continental Europe in the 17th and 18th centuries, which witnessed the formation of an opposition between state and society (Chandhoke, 1995; Habermas, 1993; Knutsen, 1997; Polanyi, 2001) and the subsequent separation of public and private realms (Habermas, 1993).

In the 17th and 18th centuries, the rise and transformation of the modern state was facilitated by capitalist market economies, “when town economies were extended into national territories and the modern state grew up to administer these territories” (Calhoun, 1994, p. 8).

The development of the state bureaucracies as agents of permanent administration, buttressed by standing armies, created a new sphere of public authority.....Public authority thus was consolidated into a palpable object distinct from the representative publicity of the ruler and the older estates as well as from the common people, who were excluded from it. (ibid., p. 8)

¹⁷ In the 17th century, rights theories were advanced in order to curb the state power both “over property and religious conscience” (Horwitz, 1982, p. 1423).

“Public” in this narrower sense means “state-related” (Habermas, 1993).

It was against this public authority that a society was thinkable in a way that incorporated individuals, family, voluntary associations, franchised companies, etc., which were not components of the public authority of the state, and in this sense, located in a private realm. The separation of society and state reflected the separation of the social and the political (Habermas, 1993). This concept of society was not completely new; it can be traced to ancient Greek and Roman times when some notion of society had existed to view it as “distinct from the body politic and with moral claims independent of, and sometimes opposed to, the state’s authority” (Wood, 1990, p. 61). In the 17th and 18th centuries, in face of the absolutism of state power, the ancient concept of society was reworked by Enlightenment political philosophers to evolve into civil society consisting of individual citizens with rational power to defend their freedom and rights against the domination of the state (Knutsen, 1997). Legal scholar Morton J. Horwitz calls this emergence of the public-private distinction the result of “a double movement in modern political and legal thought” (Horwitz, 1982, p. 1423). In contrast to the comprehensiveness of the concept of society, civil society had ever since taken on a political connotation and a political mission to fulfill against state oppression.

What is worth noting here is that from the beginning, the evolution of the civil society concept had been “bound up with the development of private property as a distinct and autonomous locus of social power” and presumed the modern market economy as its essential condition (Wood, 1990, pp. 61-62). This is the basis to understand the separation of public and private as well as their interpenetration, the

analysis of which is the central task of Habermas in his historical sociological study, *The Structural Transformation of the Public Sphere* (1993).

Habermas (1993) points out that the privateness of an individual in the 18th century had two crucial sources. One was the bourgeois conjugal family, and the other was the market economy. The conjugal family formed the intimate sphere “where the experience of ‘humanity’ originated” (p. 48). The three elements of voluntariness, community of love, and cultivation of the person were supposed to inhere in humankind and constitute its absoluteness: the common humanity, following its own laws, from extrinsic purposes of any sort (p. 47). Although family was considered the sphere in which this humanity originates, the articulation of this humanity as individual subjectivity was produced in the actual historical process by a public sphere in the world of letters (clubs and presses).

The other source of privateness was the market economy. With commodity exchange and social labor largely liberated from governmental directives, the market economy “made affairs in the sphere of social reproduction as much as possible a matter of private people left to themselves and so finally completed the privatization of civil society” (Habermas, 1993, p. 74). Habermas (1993) explains how privatized individuals as commodity owners could view themselves as autonomous. First, the independence of the intimate sphere of the conjugal family believed as cut off from all connection with society was of a psychological nature, for the family was actually “dependent on the sphere of labor and of commodity exchange.” Further more, “even this consciousness of independence can be understood as flowing from the factual

dependency of that reclusive domain upon the private one of the market” (p. 46).

To the degree that they were emancipated from governmental directives and controls, they made decisions freely in accord with standards of profitability. In this regard they owed obedience to no one and were subject only to the anonymous laws functioning in accord with an economic rationality immanent, so it appeared, in the market. These laws were backed up by the ideological guarantee of a notion that market exchange was just, and they were altogether supposed to enable justice to over force. (p. 46)

In this sense, Habermas concludes that this autonomy of private people was founded on the right to property and realized in their participation in a market economy (p. 46).

Although the market economy privatized the process of economic reproduction, its economic activity “had to be oriented toward a commodity market that had expanded under public direction and supervision” and took place outside the single household. Due to these factors, the economic activities were of “general interest” (Habermas, 1993, p. 19). Correspondingly, a public sphere in the civil society was formed where “private people come together as a public” against the public authorities to engage in “a debate over the general rules governing relations in the basically privatized but publicly relevant sphere of commodity exchange and social labor” (p. 27). Through these debates came forth public opinion, which claimed rationality, and “battled with public power” over the latter’s regulation of the sphere of the social (p. 52). Habermas states that the modern public sphere is distinct from the ancient one in that its theme

...shifted from the properly political tasks of a citizenry acting in common (i.e., administration of law as regards internal affairs and military survival as regards external affairs) to the more properly civic tasks of a society engaged in critical public debate (i.e., the protection of a commercial

economy). The political task of the bourgeois public sphere was the regulation of civil society...(p. 52).

This public sphere of the civil society “challenged the established authority of the monarch” “with the background experience of a private sphere that had become interiorized human closeness” (p. 52). Habermas argues that “in this sense its character was from the beginning both private and polemical at once” (p.52). What characterizes this bourgeois polemic was “the use of a rigorous concept of law,” in the enactment of general and abstract norms (p. 53). In the following passage, Habermas explains the relationship between law in the public sphere of the political realm and public opinion from the civil society:

A political consciousness developed in the public sphere of civil society which, in opposition to absolute sovereignty, articulated the concept of and demand for general and abstract laws and which ultimately came to assert itself (i.e., public opinion) as the only legitimate source of this law (p. 54).

This law – the legal format of norms – reflected the self-interpretation of the public in the political realm. It was related to the public opinions from the public sphere of the civil society, through a process “in which the state-governed public sphere was appropriated by the public of private people making use of their reason and was established as a sphere of criticism of public authority” (p. 51). This appropriation process of the state-governed public sphere by the public of private people took place by “functionally converting the public sphere in the world of letters already equipped with institutions of the public and with forums for discussion” (p. 51). Given this historical origin, Habermas argues that these two forms of public sphere – in the political realm and in the world of letters – “blended with each other in a peculiar

fashion” because:

In both, there formed a public consisting of private persons whose autonomy based on ownership of private property wanted to see itself represented as such in the sphere of the bourgeois family and actualized inside the person as love, freedom, and cultivation – in a word, as humanity (p. 55).

The particularity of property ownership and the universality of humanity co-existed in a privatized individual and thus also featured the public sphere.

As a private individual, the bourgeois was two things in one: owner of goods and persons and one human being among others...This ambivalence of the private sphere was also a feature of the public sphere, depending on whether privatized individuals in their capacity as human beings communicated through critical debate in the world of letters, about experiences of their subjectivity or whether private people in their capacity as owners of commodities communicated through rational-critical debate in the political realm, concerning the regulation of their private sphere. (pp. 55-56)

In a way to summarize the above analysis of the private basis of public spheres, and the public connotation of private realms, Habermas presents the bourgeois public sphere in the 18th century as a schema of social realms with the table below: (p. 30):

Table 1: The Bourgeois Public Sphere in the 18th Century as a Schema of Social Realms

Private Realm	Sphere of Public Authority	
Civil society (realm of commodity exchange and social labor) Conjugal family’s internal space (bourgeois intellectuals)	Public sphere in the political realm Public sphere in the world of letters (clubs, press) (market of culture products) “Town”	State (realm of the “police”) Court (courtly-noble society)

Source: Habermas, (1993), p. 30

In this table, private realm was composed of civil society and family, and state and court formed the sphere of public authority. In between, a public sphere in the political realm was formed when private individuals gathered to use rational critical debate to form public opinions with regards to actions of the public authority in regulating the economic activities. Or a public sphere was formed in the world of letters when the critical communication was related to a shared humanity generated on the basis of conjugal families.

Although the public sphere in the political realm was based on property ownership, its other logic was based on the belief of “common human beings” and upheld the principle of universal access to itself (p. 85). But to pick up this idea of “common human beings,” one had to rely on “education,” or, in another word, the cultivation of a person articulated by the world of letters. To the public sphere in the political realm, education and property ownership were the two criteria for admission. Given this condition, although the public sphere generated by private property owners who gathered together and the public sphere in the literary world did not have the same circles of persons, “in the educated classes the one form of public sphere was considered to be identical with the other” (p. 56).

As soon as privatized individuals in their capacity as human beings ceased to communicate merely about their subjectivity but rather in their capacity as property-owners desired to influence public power in their common interest, the humanity of the literary public sphere served to increase the effectiveness of the public sphere in the political realm. *The fully developed bourgeois public sphere was based on the fictitious identity of the two roles assumed by the privatized individuals who came together to form a public: the role of property owners and the role of human beings pure and simple.* (emphasis in original) (p. 56).

Historically, the identification of the public of “property owners” with that of “common human beings” was made easy “as the social status of the bourgeois private persons...usually combined the characteristic attributes of ownership and education” (p. 56) for formal education at that time was more a consequence than a precondition of a social status (p. 85).

Although the public sphere had its origin from private realms, the legal system institutionalized the separation of private and public. A system of private law conceptualized the legal transaction as involving a contract based on a free declaration of will by modeling on the exchange transaction of freely competing owners of commodities (p. 75). The codifications of private law “guaranteed the institution of private property and, in connection with it, the basic freedoms of contract, of trade, and of inheritance.” Along with these codifications, “a system of norms was developed securing a private sphere in the strict sense, a sphere in which private people pursued their affairs with one another free from impositions by estate and state” (p. 75).

On the other hand, the laws of the state, the public laws (constitutions, legislative statutes), bound state functions to general norms and eliminated authoritarian arbitrariness to protect the order of the “free market,” together with the liberties codified in the system of bourgeois civil law (pp. 79-80). For the bourgeois constitutional state, “[d]elimited jurisdictional areas and observance of legal formalism were therefore criteria..., a ‘rational’ administration and an ‘independent’ judiciary were its organizational conditions” (p. 80). However, the legislation in a constitutional state would not necessarily be guaranteed to be geared toward the needs of bourgeois

commerce. “Only with power to legislate itself did the public constituted of private people obtain this certainty” (p. 81).

The constitutional state as a bourgeois state established the public sphere in the political realm as an organ of the state so as to ensure institutionally the connection between law and public opinion. (p. 81).

With recourse to public opinion, this legislation “was supposed to be the result not of a political will, but of rational agreement,” and “could not be explicitly considered as domination” (p. 82).

In a constitutional state founded on the sanction of a basic law or constitution, “the functions of the public sphere were clearly spelled out in the law” (p. 83) in the format of basic rights:

A set of basic rights concerned the sphere of the public engaged in rational-critical debate (freedom of opinion and speech, freedom of press, freedom of assembly and association, etc.) and the political function of private people in this public sphere (right of petition, equality of vote, etc.). A second set of basic rights concerned the individual’s status as a free human being, grounded in the intimate sphere of the patriarchal conjugal family (personal freedom, inviolability of the home, etc.). The third set of basic rights concerned the transactions of the private owners of property in the sphere of civil society (equality before the law, protection of private property, etc.). (p. 83).

As a consequence of the constitutional definition of the public realm and its functions, “publicness became the organizational principle for the procedures of the organs of the state themselves”: parliamentary deliberations was public, trial procedures in court were made public, and even the independent judiciary needed checking by public opinion (p. 83). Public opinion was assured of its influence, which connected in legislation the delegates and voters as parts of one and the same public (p.

84). However, the model of civil society implied in the constitutional norms was theoretical and could not correspond to the reality. The “private people” who met the qualifications of property and education to form the public was a small minority, whose interest as class interest formed the basis of public opinion. The related categories of civil society denoted tendencies, but tendencies only. They were “drawn from the historical process of capitalism,” and together with the liberal phase of capitalism, “were themselves historical in nature” (p. 84). The transformation of capitalism from its liberal laissez-faire stage to industrial and corporate stage changed the bourgeois public sphere profoundly and brought to the fore its contradictions institutionalized in the bourgeois constitutional state.

The social condition of a bourgeois public sphere was its remaining in the private sphere with a liberalized market under condition of free competition and independent prices. Instead, capitalism’s development since the late 18th century involved processes of concentration of wealth and social powers in private hands. Conflicts of interests that could no longer be settled in the market were transferred onto a political level, becoming one cause of state intervention. This trend also resulted in “the transfer of public functions to private corporate bodies.” On the other hand, state intervention also took the path in “the waning nineteenth century” when “a state...in virtue of the constitutionalization...of a political public sphere tended to adopt the interests of civil society as its own” (p. 142). These trends of state interventions and the growing social powers of “society” for assuming functions of public authority led to a mutual infiltration of public and private spheres. A distinction between “public” and “private”

became difficult to hold (pp. 141-142). A concentration of capital and a growing state interventionism were connected, and what characterized the capitalist state was its interest of “maintaining the equilibrium of the system which could no longer be secured by way of the free market” (p. 146).

The concentration of power in the private sphere of commodity exchange on the one hand, and in the public sphere with its institutionalized promise of universal accessibility (established as an organ of the state) on the other, strengthened the propensity of the economically weaker parties to use political means against those who were stronger by reason of their position in the market. (p. 145).

The interferences of the state in the private sphere since the end of the last century showed that the masses, now entitled to political participation, succeeded in translating economic antagonisms into political conflicts. (p. 146).

In summary, the social-welfare state in industrial society assumed multiple functions: “providing protection, compensation, and subsidies to the economically weaker social groups...; preventing or at least alleviating long-term changes in the social structure or of systematically supporting and even guiding them; and taking over the provision of services that hitherto had been left to private hands” (p. 147).

The above review of Habermas’ historical study does not do justice to the full complexity of his research and argument. However, it is sufficient to contrast the seemingly private and public dichotomy with the complexity of the historical process, in which the concepts of public and private differentiated and then became interlocked. It also helps us attain a more sophisticated understanding about the virtue of civil society. Most important of all, this review provides a historical context and a conceptual framework to examine and interpret the interactions in this case study that evolved in

the name of public interest.

The review of the history of corporation in the previous section demonstrates that the legal construct of corporation as a fictitious person enabled corporate entities to participate in the above mentioned historical process similarly to a privatized person in the sense that a corporation's property right was an inalienable right. At the same time, corporate entities rose to be prominent members of society in place of individuals, assumed public functions, and accumulated wealth, power and public authority. This trend formed the context for the interlocking of the public sphere with the private realm examined by Habermas.

More importantly, the review of the development of colleges and universities as corporations displays to us that what is missing in Habermas' framework are the colleges and universities, the precapitalist institutions (Brint, 1994, p.16), which emerged with their rather independent status long before the modern formation of state and society, public and private. Although they later participated in economic production by providing occupational training, their earliest functions included passing on ecclesiastic knowledge in place of churches and cultivating persons in place of family.

With the newly attained knowledge about the 19th century background, we turn our attention again to the Dartmouth College ruling and its impact on the establishment of American public universities.

The Creation of American Public Universities

Habermas' analysis of the 19th century depicts the process of interlocking

process of the public and private spheres. At about the same historical time, legal thoughts were making effort to conceptually separate public and private. Legal scholar Morton Horwitz (1982) points out that jurists in the 19th century just developed the idea of a separate private realm free from public power ¹⁸(p. 1425), the Dartmouth College case being one of the most famous illustrations of this development. The ruling of the Dartmouth College case was a watershed, for it established the separation between public and private corporations, while the prior law of corporation treated both municipal and trading corporations as arms of the state (Horwitz, 1982). It freed the private corporations from the regulatory public law.¹⁹ Because of this ruling, the church-based colonial colleges became inviolate, a movement for the creation of privately endowed colleges and universities was spurred, and the establishment of business companies was also stimulated.

Although the significance of the impact of the Dartmouth College case on histories of colleges and universities as well as business corporations is beyond doubt, scholars do not necessarily agree on what the substance of this impact was. Rudolph argues that “the decision put the American college beyond the control of popular prejudice and passion; it assured the further alienation of the people from the colleges, but on the eve of the Jacksonian movement it also put the colleges beyond the control

¹⁸ The creation of a problematic dichotomy of public and private has a very complicated political and legal history (Horwitz, 1982; Kennedy, 1982).

¹⁹ According to Horwitz (1982), the development of the 19th century legal thoughts had one of the central goals to draw a distinction between public law – constitutional, criminal and regulatory law – and the law of private transactions – torts, contracts, property and commercial law (1424).

of people who understood neither the colleges nor their problems” (Rudolph, 1992, p. 211). In contrast to Rudolph’s observation of disconnection and isolation, Duryea contends that the Marshall decision “defined in a revolutionary manner” the autonomy of the College from government control (Duryea, 2000, p. 105). In fact his 2000 book on academic corporations is set to examine the autonomy of the academic board over its internal affairs from external forces and interests, of which the state and federal governments are major representatives. Brody comments that the Dartmouth College case buttressed the theory that higher education in the United States may be “purely a private affair controlled by the particular group (religious) concerned,” which motivated the states to create colleges and universities under state control (Brody, 1935, p. 38).

The three scholars demonstrate different views of how to define public and private, as well as their relationships. Duryea emphasizes the coerciveness of the government power. He opposes government control as interference versus the autonomy of the College as freedom. In the same vein as the natural rights liberalism of Locke, this perspective implies that the power of the government as the supreme authority should be curbed in order to protect the inalienable rights of individuals. In the case of Dartmouth College, the justification of this protection from state interference hinged on the proprietary status of the Trustees. Thus academic corporations fall in a distinctive private realm that requires protection against the coercive power of the public authority embodied by the government.

In Rudolph’s comments on this lawsuit between the state and a college, his use of words such as “popular,” “the people,” and “people” to replace the state suggests the

republican idea of a legitimate democratic state founded on a popular basis of people with civic virtue and engaged in political deliberation. In this sense, his comments acknowledge the connection between government as the most powerful instrument of the welfare state, and the people as the source of the government's legitimacy and the beneficiary of the government's service in providing common good. The problem is the difficulty in identifying "the people" as a collective body able to produce the Habermasian public opinion and participate in the political realm. Another difficulty in producing such a public opinion lies in the lack of knowledge of college affairs in "the people," which prohibits any of their collective opinions regarding the College from being rational-critical.

Brody (1935) draws more explicitly the distinction between public and private based on proprietary ownership. He categorizes colonial colleges such as Dartmouth College as private because they are not controlled by the state:

All higher institutions of learning are performing a function which is essentially public in character. There is no fundamental distinction between state or public universities on the one hand, and private institutions on the other, so far as their educational functions are concerned. Most private institutions are open to the public and are encouraged by the state for their useful contributions. In law, however, the status of an institution as public or private is determined by the locus of ultimate ownership and control. (p. 79)

Based on the recognition of property ownership, the Dartmouth College ruling did not address the reasons to consider the College public: the importance of higher education to the general public, and the right to provide higher education left by the federal government to the state.

It was not until the mid-19th century "with the increased recognition of the

public importance of higher education” that state-incorporated universities fully came under state control (Brody, 1935, p. 45). When these universities were incorporated by the states, the charter was granted not by the state executives, but by state legislatures. “For, unlike the contractual relation which was supposed to exist in the charters granted by the governor,” charters granted by the legislature were “ordinary acts of legislation which could be amended or taken away whenever the legislature saw fit” (p. 45).

In the American political context, the middle 19th century saw much abuse of legislative power accompanied by widespread corruption. Given the general distrust of state legislatures, constitution-makers of the states drew up “long lists of specific restrictions on the action of the legislature in many subjects” (Brody, 1935, p. 50).

The position assumed by the people is that the state constitution is essentially a guarantee against legislative invasion of their political and property rights, and the judicial doctrine, generally, is that any language in the constitution must be construed as limiting the legislative power to the furthest possible extent. (p. 50).

Accordingly, the state government “is one of residual power and may exercise any power not clearly forbidden by constitutional provisions” (p. 50).

Another feature of American polity in the 19th century was legislative centralization and administrative decentralization.

By legislative centralization is meant that the powers which the local authorities may exercise, the degree to which they may participate in the work of government and the ways in which they may so participate are fixed in detail in the statute of the legislature.

While all legislation is considered to be a part of the general business of the central government, almost all the execution of state legislation has been regarded as local in character....the localities and local officers are from the standpoint of their functions and powers subjected to a very extensive legislative control, but from the standpoint of administering the

laws they possess, however, large freedom of action. (Brody, 1935, p. 61).

However, higher education as one of the new functions the state had “been obliged to assume as a result of changing social conditions” had not been placed within the control of the “local territorial corporations,” but directly taken over by the central administrative organization, in spite of the deeply entrenched ideal of local self-government in the American mind (p. 63).

According to Brody (1935), “[the] legal doctrine is that the activity of the state in higher education when carried out through the instrumentality of a state institution assumes the character of a strictly governmental exercise of sovereign power” (p. 95). The public university may be “characterized as a department of state, as part of governmental machinery” (p. 95). What is worth noting is that this “department of state” specifically refers to the administrative branch. Due to the extension of governmental activities in scientific, technical and commercial fields, the administrative aspects of the state government became distinguished from the executive branch, which consequently became “differentiated into two elements, the political and the administrative” (p. 143). Although the governor with regards to the executive functions coordinates with the legislature and the judiciary following the principle of the separation of power, “the administration function...resides...with the legislature” (p. 144).

The legislature is the source of all administrative authority, and is the body of ultimate responsibility. It possesses the power of determine the organization of the administrative branch of government, to fix the extent of its power, and to regulate the exercise of administrative power in all particulars. The legislature has been called the “central administrative authority of the state.” (p. 144).

Of course, educational administration “is involved in and interrelated with the operation of all phases of state government – legislative, judicial and executive”(p. 144).

Although the authority to control resides in legislature, the wide recognition of fundamental limitations inherent in a political body calls attention to “administrative control”:

It became evident that the control of discretion in the interest of economy and efficiency must be left to higher administrative authorities. That is to say, the officers of the administrative branches are to be directed in the performance of their duties not by laws enacted by the legislature but by a superior administrative body presumably endowed with technical knowledge, and able to work consistently and continuously on the basis of expertness. (Brody, 1935, p. 161)

An important mechanism to realize this administrative control is the board of regents as the agents of the legislature, and the state carries on its educational activities through the medium of a corporation “because of administrative efficiency and for reasons of historical development” (Brody, 1935, p. 112). In this sense, a state university as a special corporation has two types of functions to perform: “primary or governmental, and proprietary or institutional.” The proprietary activities refer to “those which the university must accomplish in order to realize its primary function,” such as:

Proper plan maintenance, the employment, compensation, and general control of its personnel, the making of contracts, and purchasing supplies, the examination and settlement of claims, the keeping of accounts and rendering periodic report. (p. 113)

Given the above definitions of a public university, we may conclude that although public universities were incorporated in the U.S. as early as the 18th century,

they were neither public nor universities in any real sense. The charters of the University of North Carolina (1789) and the University of Georgia (1785) treated them as private corporations with funding derived from private sources and self-perpetuating boards of trustees (Brubacher, 1997, p. 146). Neither institution had a plan for advanced learning. In contrast, Brubacher considers the University of Virginia, established in 1819, as America's first real state university because it aimed at advanced instruction. With a secular and non-denominational orientation (p. 148), it was defined in its constitution as a public enterprise. Other than this singular effort in the South, it was the Midwest that saw the emergence of the state university idea before the Civil War. The University of Michigan was undoubtedly the leader in this movement. Its unique contribution to American higher education lies in its status as an independent agency of the state government. Brody argues that the University "marks the beginning of the movement for independent control by a board of regents" (Brubacher, 1935, p. 166). In Chapter 3, we will enter the specific struggle of the University to attain its independence from the state legislature. As a background, the following section covers the various aspects of the creation of the University.

The Creation of the University of Michigan

Many historians have recognized the University of Michigan as showcasing the meaning of a state university. Long before Brubacher (1997), F. W. Blackmar (1890) stated that the University was "indeed the first model for a complete State University in America" (p. 238) and Richard Rees Price (1923) claimed that the University "is the

earliest and probably the best type of the modern conception of a state university” (p. 12). In his 2000 publication, Duryea cites the work of Alexander and Solomon in 1972 to show that, following the example of the constitutional provision for the University of Michigan in 1850, twenty-seven states “make explicit reference to higher education in their constitutions,” and nine of them provide formal autonomy for their universities like Michigan (Duryea, 2000, p. 164). The University was also considered a model in terms of university financing and was selected by Price (1923) to feature in his study of “the genesis and evolution in theory and practice of state support of an institution of higher education” for the following reasons: “It is a representative institution. It was the first great state university in the present meaning of that term. Its history shows the development of the idea of state support of a state university” (Price, 1923, p. 11). In this section, I review the creation of the University of Michigan by focusing on four aspects: first, the federal initiation and land grants that stipulated and also made possible a university in Michigan; second, the early design of the University as a public institution; third, the early financing for the University before the arrival of state appropriation; and fourth, the origin of the constitutional status of the University.

Early Federal Initiatives

The Midwest public universities attribute their establishment to federal land grants through two pieces of Congressional legislation adopted in 1787 (Hinsdale, 1906). The first, adopted on July 13, was called “An Ordinance for the Government of the Territory of the United States, Northwest of the River Ohio.” It provided for the

government of the Northwest Territory, and included a clause that “set forth the future policy of the Federal Government in the matter of education” (Shaw, 1941, p. 10):

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. (p. 10)

Complementary to this general declaration on the responsibilities of the forthcoming new states in ensuring educational facilities therein, the second Congressional act was adopted on July 23, entitled “Powers to the Board of Treasury to Contract for the Sale of the Western Territory.” It contained parallel provisions on granting lands to both common schools and a university within a new state. The former part on common schools reaffirmed an Ordinance made in 1787, but the latter part concerning universities was new and the one with which this research is concerned.

No more than two complete townships to be given perpetually for the purpose of a university, to be laid off by the purchaser or purchasers, as near the center as may be, so that the same shall be good land, to be applied to the intended object by the legislature of the state. (Hinsdale, 1909, p.19)

The significance of these two statutes for the state universities in the western areas cannot be underestimated.²⁰ In the case of Michigan, the first quoted statement was emblazoned on the entrances of University Hall and Angell Hall (the latter still stands today), both central buildings of the University, to remind people of the lofty purpose of the University as defined by the nation’s founders. The land granted by the statute of July 23, 1787 produced an income that constituted the major part of the University’s

²⁰ For an analysis of these two statutes, please refer to Hinsdale, 1906, Chapter 3.

total income until state appropriation began in 1867, and served as the University endowment well into the early twentieth century (Price, 1923).

The Ideational Aspect: Crown of a Public Instruction System

The University of Michigan has been honored with two of the greatest presidents in the history of American higher education: Henry P. Tappan (1852-1863) and James B. Angell (1871-1909). The University did not really develop into a university in the modern sense of the word until Tappan was selected as its first president. However, there were people who came before Tappan and laid far-reaching foundations for the University. It is important to know who these people were and how they made the University different from other forerunners in the East.

When the University was designed in 1817 by Judge August Woodward, it was envisioned as the capstone of a statewide educational system. The state would supervise with centralized control, all supported by taxation,²¹ following the model of Napoleon's Imperial University. Woodward included thirteen subjects based on a classification of knowledge he drew up in his book, *A System of Universal Science*, published just one year earlier in Philadelphia (1816). In contrast to the classic curriculum prevalent in the Eastern universities, Woodward's design incorporated modern subjects such as economics, chemistry, and military science. As distinct from the existing models in Europe or the United States, the professors were to run the

²¹ The primary schools were to be free for all, and higher education was to have a low fee.

University.²² Father Gabriel Richard and Reverend John Monteith were hired to teach and also served as the University President and Vice President, respectively.

Woodward's grand idea did not last long. In 1821, the governing authority of the University was transferred to the Board of Trustees under state stipulation. The same year, Monteith left for a professorship at Hamilton College. Father Richard lost his administrative title, but was appointed to the Board. He died in 1832. Judge Woodward was not appointed to the new Board, and soon died in 1827. In 1827, the Board gave up support of the Classic Academy in Detroit and asked the teachers to continue if they could live on student fees. The grand plan to have a Catholepistemiad or a University of Michigania in Detroit failed.

The university idea came to life again 8 years later. When the Territory planned to join the Union, and a state constitution was drafted in 1835, John Pierce and Isaac Crary exerted decisive influence on the education provisions and re-envisioned the University for Michigan. Pierce and Crary were friends and both read French philosopher Victor Cousin's *Report on the State of Public Instruction in Prussia*, firstly published in Paris in 1831, translated into English in London in 1834, and published in the United States in 1835. Some historians argue that Pierce and Crary incorporated the Prussian model which was derived from the Napoleonic concept (Peckham, Steneck & Steneck, 1994); other historians maintain that they studied education reforms of both

²² American colleges and universities at that time were under boards of clergymen, or received partial financial support from denominations. Napoleon's Imperial University actually represented the complete control of higher education by the state authority.

France and Germany (Shaw, 1937). Although the Napoleonic concept is different from the Prussian model, the distinction is not as important here as the idea shared by both models: a public education system centrally governed and funded by the state.

However, like the territorial period, the government of the young state was still too weak and poor to actually support such a university, and state funding as a major source of income for the University did not arrive until three decades later. Until then, the University relied on the federal land sales, the land sales from a treaty with Indian tribes, donations from individuals with public spirit or interested in private gains, student fees, and sometimes, a state loan.

The Finance Aspect: Hybrid Funding Sources

When the University was founded in 1817, the tuition was set to be free and the funds to support it were originally to be derived from taxes and other public sources (Cudlip, 1969). The acting governor and judges declared to increase existing taxes in the territory by 15 percent and appropriate that percentage for the University (Peckham, Steneck & Steneck, 1994). According to Hinsdale (1906), the salaries were issued but the taxes for this purpose were not really levied.

The first fund came from donations (Peckham, Steneck & Steneck, 1994, p. 7). The September 19 issue of the *Detroit Gazette* released a list of first donors: \$180 pledged from the Territory; \$250 from the Masonic Lodge; \$200 from Woodbridge, who designed the University curriculum, payable over four years; \$180 from James Conner payable over three years; and \$250 from merchant James Abbott over ten years. This

grand total of \$1060 soon became more than \$3000 a month later through more donations and pledges. The annual salaries set for the University personnel were \$25 for president, \$18.75 for vice president, and \$12.50 for professor.

Another source of the University's early funding was a treaty between Lewis Cass, the Governor of Michigan Territory and the Indian tribes of the Northwest (the Ottawas, the Pottawatomies, and the Chippewas) (Price, 1923). The Indians granted six sections of land for purposes of education, half of which went to the College at Detroit, the forerunner of the University. The immediate return of the land for the college was estimated as more than \$5000 by the University historians Ten Brook and Elizabeth Farrand, and the ultimate return was estimated as \$22,010, reflected in a Supreme Court decision that allowed the University to recover the property from the City of Detroit (Price, 1923, p. 15).

The new trustees appointed to the University in 1821 set up a committee to locate the lands granted for the University by the Congress. It was not until 1826 that an act released by Congress on May 20 made it possible for the committee to locate and select lands "with great skills, pains and good judgment" (Price, 1923, p. 16). As mentioned earlier, when Michigan was admitted to the Union as a state in 1837, Congress granted the lands thus selected for the use of the University to the prescription of the state legislature. The sale of the lands in the following years was a process of loss and depreciation for the University due to the nature of the legislature – a political body "which in all history has been prone to succumb to the political pressure of the moment, without too much thought of the future, ultimate, and permanent

consequences of its immediate acts” (Price, 1923, p. 29). What the trustees did was prolong the time of payments on the university land so that “in due course of events, as the state recovered its prosperity, the full value of the land” would be realized (p. 30).

In 1843, the total sales of the land realized for the University was about \$137,000, in contrast to \$921,000 as estimated by the Superintendent of Public Instruction in 1837. The sales then came into a permanent endowment established for the University and managed by the State Treasurer. It was “a fund inviolable and not to be diminished, the interest of which only is available for university expenses” (Price, 1923, p. 30). “In 1882, when all the university lands except 287 acres had been sold, the fund amounted to \$543,317.66.” The interest derived from this endowment fund was \$38,398.47 that year. To put these numbers into perspective, the income from student fees that year was \$85,979.10, and the mill tax \$38,250.²³

Examining the University’s finance in 1923, Price pointed out that the management of the University endowment by the State Treasurer actually created a permanent state debt. “In other words, the state borrowed the university fund, or permanent endowment, and expended it for state purposes, pledging itself to pay the interest thereon” (Price, 1923, p. 30). In agreement with the historian Hinsdale, Price argued that the University endowment had disappeared, being expended by the state for state purposes, existing only as an item on the book, instead of being “an aid to the

²³ In comparison, at the end of the fiscal year 1920, the endowment fund amounted to \$547,489.40 with an annual interest of \$38,428.89, the student fees \$682,445.16 and mill tax \$1, 818,750. (Price, 1923).

tax payers by relieving them of that much of university support” as intended by the federal government (p. 31). In contrast, if the fund were managed by the University Regents, “the loans would have been repaid or bonds would have matured and the principal would thus have reverted to the fund” which would enable the endowment to stay in hand as a tangible resource.²⁴ Even though, in the case of Michigan, the money was perfectly safe, and the interest was more important to the University than the principal, Price disputed this practice of state management because the people of Michigan were “not relieved of any of the support of the university by the United States, which was the purpose of the endowment” (p. 31).

Another case of an important financial transaction between the University and the state was the loan of 1838 by the Legislature to the University of \$100,000 in the form of certificates running twenty years with an annual interest of six percent. The University used the premium to erect the buildings in Ann Arbor and cover the expense of the school branches, but for several years following, the income of the University fund was almost entirely consumed by paying the \$6000 annual interest. Being accused of illegally and improperly eroding the trust fund generated from the federal land grant, the Legislature in 1859 and 1877 took actions in favor of the University. The loan of \$100,000 ended up as a gift from the state to the University, except the \$6000 annual interest paid for several years.

Up to the year 1867, the University was supported by the income of its

²⁴ According to Price, this was also the practice of several other states.

endowment and student fees, except the 1838 loan from the state. In this sense, the University was a United States land grant university until 1867. Price contended that “[t]he true conception of a state university had not yet been grasped by the people. It was not until 1867 that the true basis was established which has been maintained ever since” (p. 32). The University of Michigan received the first state appropriation in 1867 based on a one-twentieth mill tax.²⁵ State appropriations increased year after year and occupied 76.6% of the total University income by 1920.

The Origin of the Constitutional Status of the University

The Congress statute of July 23, 1787 had a downside for it started a Congressional legacy of empowering the state legislature regarding university affairs by entrusting the lands to its hand. The Territory of Michigan was organized in 1805. On August 26, 1817, the Governor and Judges of the Territory adopted “An Act to Establish the Catheolepistemiad, or University of Michigania”, which provided the appointment of a President and the creation of thirteen didactors, or Professorships. The President and the didactors or Professors, to be appointed and commissioned by the Governor, were invested with the power of governance for this public institution (Cudlip, 1969). This was a very rare governing arrangement, because previously established colleges and universities had been using a board of trustees, either alone or together with a board of visitors, for instance, in the case of Harvard (Duryea, 2000). From 1817 to 1821, the

²⁵ Mill is a notional unit equivalent to one thousandth of a U.S. dollar, or one tenth of a cent.

governing body of the University in its early stage experienced its own transformation from a self-governing president and faculty to operating under the governance of a Board of Trustees.

The 1817 Act was repealed by the law adopted on April 30, 1821, entitled, “An Act for the Establishment of a University,” which substituted a Board of Trustees for the self-governing President and Didactors. The University of Michigan became the legal name of the organization. The “Trustees of the University of Michigan” was created as a “body politic and corporate” (1 *Terr. Laws*, 1821, p. 879). The board was composed of twenty-one trustees named in the Act, of whom the governor was always to be one. Vacancies in the board were to be filled by the vote of the legislature. In this way, the University was placed under the control of the legislature. This legislative control was confirmed in the first constitution of the state in 1835.

Before the admission of Michigan as a state in 1837, Congress passed a series of laws in 1804, 1826 and 1836, which pursued the dedication of lands for common schools and a university, and contained changes regarding the administration of selection and disposal of the lands (Hinsdale, 1906, p.20).²⁶ In 1835, Michigan adopted its first constitution which recognized the University and the state’s responsibility to

²⁶ In 1836, in response to the propositions submitted by the convention that framed Michigan’s first Constitution in 1835, Congress accepted part of the proposal, which included this following provision: “Second, that the 72 sections of land set apart and reserved for the support of a University by an Act of Congress approved on the 20th of May, 1826, entitled ‘An Act concerning a seminary of learning in the Territory of Michigan,’ are hereby granted and conveyed to the State, to be appropriated solely to the use and support of such University, in such manner as the Legislature may prescribe” (Hinsdale, 1906, p.20).

provide means for its support. The provisions concerning higher education stipulated that it was the duty of the legislature to comply with the federal policy established in the territorial days, which granted lands to this state for the support of a university. The legislature was also responsible to “provide effectual means for the improvement and permanent security of the funds of said university” – a provision which was not actually fulfilled until several decades later.

The legal significance of the legislative control of the University is well demonstrated in the state Supreme Court opinion over an 1856 case. In 1856, the Supreme Court of Michigan decided on the case of the Regents of the University of Michigan v. the Board of Education of the City of Detroit about the right of the University in Ann Arbor to possess the assets of the Detroit institution established in 1817, re-enacted in 1821, under the name of Catholepistemiad or University of Michigan. The two key, interconnected issues were whether the University of Michigan of 1837 in Ann Arbor was the same institution incorporated by the 1821 Act, and whether the Regents residing over the governance of the Ann Arbor organization were the lawful successors of the Trustees of the Detroit organization provided in the 1821 Act. The counsel for the defendant argued that the Trustees of the University of Michigan provided by the 1821 Act constituted “a private Corporation, and that their charter constituted a contract between the Legislature and the Corporators, which the Legislature could not abrogate without the consent of the Corporation” (Cudlip, 1969, pp. 18-19).

The court struck down these challenges made on behalf of the defendant. It

found that all of the three Acts defined the nature and purpose of the University of Michigan in a consistent way as being created for public purpose to serve the whole territory or the State of Michigan in the last case. All three Acts intended to establish a great public institution under the same name of the University of Michigan. In response to the defendant's reference to the social contract principle established in the Dartmouth College Case, the court resorted to the concession principle and pointed out that the 1821 Act, while creating the Corporation, reserved for the Legislature the power to repeal or modify the charter. The court so concluded:

No injustice is thereby done to the original Corporators, or their successors, for, as we have already seen, they continued in place only during the pleasure of the Legislature, and were severally subject to removal at any time; and upon such removal, any rights or interests which they might have claimed in connection with the Corporation must have terminated. The Corporation was created for the purpose of administering a great public trust, and the present plaintiffs are but Trustees for the same great purpose, and are as truly the lawful successors of the original Corporation as if they had been appointed by the Legislature under the Act of 1821 (Cudlip, 1969, p. 20)

The responsibilities entrusted in the legislature became the justification for the legislature to manage the affairs of the University (Cudlip, 1969). As mentioned before, the management of the federal land sale by the legislature resulted in a heavy loss for the University. In 1840, the legislature appointed a committee to inquire into the condition of the University and received severe criticism in the report:

When legislatures have legislated directly for colleges, their measures have been as fluctuating as the changing materials of which the legislatures were composed. When they have acted through a board of trustees, under the show of giving a representation to all, they have appointed men of such dissimilar and discordant characters and views that they never could act in concert; so that, whilst supposed to act for and represent everybody, they, in fact, have not and could not act for

anybody.” (2 H. Doc., 1840, p. 470)

When the constitutional convention of 1850 met, the delegates “recognized the need of removing the University from changing political influences and yet keeping it directly responsible and amenable to the people” (Cudlip, 1969, p. 8). As a result, the Constitution of 1850 established the University as an independent constitutional corporation under the control of an eight-member Board of Regents elected directly by the people of each judicial district at the time for the election of a justice of the Michigan Supreme Court. When a vacancy occurred in the office of regent, it was to be filled by the governor’s appointment. Section 8 of this Constitution stipulated that as a body corporate, the board of regents thus elected “shall have the general supervision of the university, and the direction and control of all expenditures from the university interest fund.” This Board was required to appoint a treasurer and secretary and to submit an annual report to the government. The same section also defined the President of the University:

The regents of the university shall, at their first annual meeting, or as soon thereafter as may be, elect a president of the university, who shall be ex officio a member of their board, with the privilege of speaking but not of voting. He shall preside at the meetings of the regents and be the principal executive officer of the university.

These stipulations brought forth two significant changes to the governance of the University by: 1), establishing the University as an independent constitutional corporation instead of the prior dependent statutory agency; and 2) investing the power of supervision in a Board of Regents responsible directly to the people instead of to the state legislature.

The implication of the constitutional autonomy gained by the University was significant. Due to political distrust of the government's commitment and capacity to serve the general welfare of the people, the Michigan Constitutional Convention of 1850 created a balance and also a tension of power between the state-created university and the state government. Through the method of public election, the Convention created a public institution of higher learning, independent of the state government, to serve the public interest as the Regents saw fit.²⁷

In this sense, the Michigan people and publicly-elected government officers, and the Michigan people and publicly-elected university regents composed two public realms. The former had its own administrative service and legislative authorization, but the latter's administration and authorization became separated from the former, at least in theory. It was only through more litigation that the distance and the relationship between these two realms was clarified. Between Michigan's legislature and the governing body of the University, the governing relationship had to go through a series of significant changes in the late 19th century until it arrived at the constitutional autonomy the University enjoys today.

The legislature and the University sailed into uncharted waters to redefine their relationship. The incident that had the most fundamental impact was a battle over

²⁷ The rationale for this use of trusteeship is presented in Epstein (1974) in contrast to state agency as the two ends of a political continuum: political distrust and political control. It is different from the dissertation Duryea (2000) produces out of the legacy of Dartmouth College case in 1819, which puts emphasis on the contract relationship between the state and the corporation, and the equal treatment of corporation as a person. Nevertheless, both lead to the same result of protecting the university from political control.

homeopathy which I turn to in the next chapter.

Conclusion

In this chapter, I have reviewed the history of corporation and the transformation of society by corporate entities. The American colonies borrowed the corporate form from Europe, particularly Great Britain, in order to conduct a variety of economic and cultural activities before the formation of a strong public authority. After the Revolution, the government was defined as a residual power constrained by the limitations set by the Constitution to curb any absolutist tendency. Against this backdrop of limited regulation, private corporations prospered and “took the place of both [sic] the state, the family, and the locality in conducting fundamental economic and cultural activities” (Hall, 1982, p. 1). At the same time, public corporations established by the government inherited the corporate structure from the private sector, together with the corporate right of owning and managing property. The board of trustees entrusted with the fiduciary duty for the corporation became an important power holder. Due to the board’s proprietary duties, the management of the corporate assets and the administration of the material operation of the corporation became a crucial component of its governance. It was through property ownership that the governance and the management of a corporation were connected. My review of corporate history not only explains the origins of institutional autonomy of the corporate form against a background of rising state authority, but also clarifies the current misunderstanding in higher education literature about corporation as referring

only to business corporation.

Habermas' analysis of the separation of private and public, state and society in European countries in the 17th and 18th centuries and their interlocking in the late 18th century and the 19th century facilitates our understanding of the values imbued in the public and private spheres, the material bases of these values, and their institutionalization through the legal system. Although Habermas' study of the bourgeois public sphere includes neither universities as "a precapitalist institution," nor the anti-utilitarian tradition derived from the "cultural ambiance of the old aristocracy" (Brint, 1994, p. 30), his focus on the public and the private spheres provides a framework for a political economic study of the American public university as a state agent with corporate form to serve both specific private interests and universal humanitarian values. Drawing upon Habermas, this research seeks to expand Gumpert's insights regarding the functions of a public university, and to reexamine Clark's analytical setup which places universities between the two poles of state and marketplace.

Against the background of the Dartmouth College ruling, Brody's study examines the legal, political and constitutional relationships between the American state and public universities in the 19th century and the early 20th century, which corresponds to the stage of public and private interlocking in Habermas' historical research. The aggressiveness of the state government and the autonomy of self-management carried in the corporate form assumed by the public universities posed a tension that resulted in varied rulings from the courts of different states. In this context, the half-century

battle of the University of Michigan to attain the judiciary confirmation of its constitutional status distinguishes itself as an achievement of political independence. The actual creation of the University of Michigan demonstrates its birth as part of the state-building intended by the territorial government and assisted by federal ordinance. The early architects designed it as the crown of the public instruction system. Its early funding came from private individuals with public spirit. Because the territory government as the public authority was still in its youth, the public sphere of the political realm largely reflected the public sphere formed by private individuals from the civil society. Problems inherent to the political body in the 19th century, as explained by Brody, resulted in a mistrust of the legislature, and the elevation of the University to a constitutional institution. This change was capable of blocking the access to the University affairs by the legislature, which had been the venue for public opinion in this young republic. This institutional arrangement leads Brody to ask what this “political independence” meant to the position of the University in the political system, but it also poses a question for us regarding how the University’s direct responsibility to “the people” was implemented. It is to this that we turn next in the following chapter.

CHAPTER III

THE HOMEOPATHY BATTLE BETWEEN STATE, UNIVERSITY AND SOCIETY

The significance of the homeopathy battle recorded in this chapter cannot be overestimated. Brody (1935) considers it a challenge to the “American system of governmental mechanics” (p. 170), for the constitutional autonomy of the University that resulted from this battle simply does not seem to fit in to that framework. While Brody (1935) acclaims the University’s attaining independence in its educational life as comprising “a most important chapter in the history of American higher education” (p. 166), he also asks: “What is to be the place of the university in the state political system?” To address this question, this chapter has to investigate beyond the activities of the University Regents and the State Legislature.

Overview of Major Events

The seesaw battle from 1855 to 1896 between the state legislature and the board of regents over the installation of professorships of homeopathy at the University provides a revealing window into the protracted and tortuous trajectory that led to the eventual confirmation of the constitutional autonomy of the University by the state Supreme Court. This section briefly reviews the litigation process, and then fills in

more details about the various protagonists involved. All the legal acts in the rather crowded chronology below will be elaborated again later.

As mentioned earlier, the 1850 state Constitution elevated the status of the University to a constitutional corporation. In 1851, a legislative act further defined the power of the board of regents regarding its general supervision of the University. In 1855, the legislature amended its 1851 Act by adding the following to Section 5: “Provided, that there shall always be at least one Professor of Homeopathy in the department of medicine.” In 1856, private citizen Drake applied for a court mandamus to compel the University to appoint such a professor. The Michigan Supreme Court denied the application, stating that it was understandable that the University may need more time to find the candidate.

In 1867, the legislature passed a statute to appropriate one twentieth mill to the University, on the condition of the appointment of a homeopathy professor in the University. The University decided to give up on the appropriation that year, but came up with a decision to establish a school of homeopathy in Detroit that would be connected to the University as a compromise solution. In 1868, the Auditor General refused to consider this Detroit institute to be in compliance with the 1867 act and blocked the release of the appropriation. It was the Regents’ turn to apply for mandamus. The court split over whether establishing a homeopathy school in Detroit instead of Ann Arbor was in compliance with the intention of the legislative act. Ultimately, the mandamus was denied because the court could not reach a consensus. Nevertheless, the University received the appropriation in 1868 together with the

funding held from the year before.

In 1873, another act was passed which stipulated the installation of two homeopathy professors in the University. In 1874, the Attorney General applied for mandamus, but the court failed to reach a consensus yet again and thus the application was denied. In 1875, a school of homeopathy was finally established on the Ann Arbor campus as part of the University and two professors were hired. In 1895, the legislature passed an act, providing for the removal of the homeopathic medical college from Ann Arbor to Detroit. In 1896, Charles F. Sterling applied for mandamus to compel the regents to comply. The application was struck down by the court, and the precedent was finally established that the Board of Regents was an independent branch of the state government, answerable to the people of the state, rather than to the Governor or legislature.

Historical accounts written about the University of Michigan are often concerned only with the significance of this legal victory to the University. However, the narrative of the University's arduous journey to political independence is a much more complicated story when we take into consideration the broader context involving the medical profession. In addition to the court opinions, the Regents' proceedings and reports filed by the University presidents, I also look into the history of the school of homeopathy at UM and, indeed, the history of the field of homeopathy itself, by examining accounts written in the early twentieth century, some before and some after the 1922 absorption of the homeopathy school into the medical school of the University.

The Medical Profession and the Homeopathy Movement in the 19th-Century United States

William Rothstein (1972) defines a profession as “a manner of earning a livelihood through the application of a body of highly abstract knowledge in some set of institutions” (p. 8). In the early 19th century, medical societies with licensing authority and medical schools with degree-granting power comprised the main institutions for the medical profession in the United States. Meanwhile, medical knowledge was still very limited, and valid therapies were scant. Physicians adopted medically invalid therapies for the reason that they had demonstrable and consistent effects on patients.²⁸ Both medical societies and medical schools contributed to the standardization of these medically invalid therapies:

In a period when few medically valid therapies are available, standardization of medically invalid therapies is useful because it reduces therapeutic conflicts among physicians, presents a united front to the physicians’ clients, and offers a means of professional validation of therapies through social norms when no objective validation is possible. (Rothstein, 1972, p. 21)

For this reason, medically invalid therapies, such as “heroic” therapy were shared by most regular physicians in the first half of the 19th century. Relying on bloodletting,

²⁸ Rothstein (1972) defines two dimensions which have general application to medical science: demonstrability and consistency. “*Demonstrability* refers to the degree to which medically significant phenomena can be measured objectively. For example, there is a marked difference in demonstrability between a diagnosis of tuberculosis based on a few external symptoms and a diagnosis based on a bacteriological analysis which isolates the tubercle bacillus. *Consistency* refers to the predictability with which an event will recur, given the delineation of the circumstances preceding and surrounding the event. For example, if a drug reduces fever in one patient, increases it in another, and has no effect at all on a third, and if the physician cannot predict which patient will undergo which change, it can be classified as a wholly inconsistent therapy” (10).

blistering and calomel, heroic therapy was brutal and terminating rather than healing. Physicians dissatisfied with these methods attempted to devise alternative therapies with support from an equally dissatisfied public. Two main movements against the regular medicine in the 19th century were Thomsonism and homeopathy.

Rothstein (1972) argues that regular medicine, Thomsonism and homeopathy in the 19th century were all sectarian due to the limited nature of medical knowledge. All being medically invalid systems, they were “dogmatic in their arbitrary selection of pathological symptoms on which to base the system” (Rothstein, 1972, p. 21). Whether they were empirical or based on observation and experiment was not the criteria to tell them apart, because they all relied on demonstrable and consistent therapeutic effects on patients to establish their credibility.

Rothstein’s study of the 19th-century American medical profession focuses on the rise and fall of sectarianism in medicine. He shows that “the institutions of regular sect and two competing sects dominated American medical practice during the second half of the nineteenth century” (p. 23) and writes:

The regulars were the largest by far, the homeopaths were influential and numerous in the northeast and in all the large cities of the country, and the descendants of the Thomsonians, the eclectics, practiced in the small towns and villages of the Midwest. Each sect had its own system of medically invalid therapeutics, each had its own medical schools, each had its own professional societies each of which had its own pharmacies; the regulars and the homeopaths had their own hospitals and dispensaries: in short, each sect constituted an independent and autonomous system of medical practice. (p. 177)

The institutional mechanisms of the regular sect were duplicated in its two competing sects partly because the regular sect ostracized its competitors from its medical

societies and schools. That was especially the case with respect to homeopaths who were regular physicians in the first place, many of whom still often practiced regular medicine instead of exclusive homeopathy.

This turf war took place in most professional matters involving therapeutics, but “in scientific matters like specialization and public health, physicians of all three sects adopted similar practices and cooperated” (p. 23). This reflects the 19th-century disconnection between medical practice focused on treatment of patients and medical theory which deals with the question of why to give a particular disease a particular treatment through understanding disease, explaining its phenomena, providing rationale for treatment and thus expanding medical knowledge (King, 1991, pp. 9-10). Medical theory was particularly concerned with science, which had become a reputable catch phrase by the mid-19th century. Claiming one’s own practice as scientifically based and criticizing other’s as dogmatic and sectarian became a common strategy within each of regular medicine, eclectics and homeopathy, each of which had sectarian practice and employed scientific method to certain extent.

So what was homeopathy in the 19th century, and why did it become popular in America? A form of medicine, homeopathy was created by German physician Samuel Hahnemann in the 1790s. Briefly put, Hahnemann formulated a law of similars, based on which, preparations causing certain symptoms in healthy individuals are given as the treatment in the form of dilution for patients exhibiting similar symptoms. Hahnemann conducted tests to find out the effect of substances on humans, a procedure known as homeopathic proving. Hahnemann conducted tests not only on healthy subjects, but

also on himself, a practice followed by his disciples. The results observed were recorded to make a repertoire of systematically compiled symptoms and the remedies associated.²⁹ In addition to drug treatment, homeopathy paid attention to environmental conditions of health, hygiene, proper diet, exercise and bed rest. Its holistic healing perspective took into consideration both the physical and psychological states of a patient in recommending remedies.

Hahnemann's treating procedures and methods were derived from his metaphysical contemplation of life, body, disease and cure – views which were very different from the regular medicine of the time, but which had a historical origin tracing far back to Hippocrates' vitalism. Vitalism believed that the functions of a living organism are due to a vital principle or force. Hahnemann stated that the process of life cannot be fully explained or regulated by the laws of physics and chemistry. Instead, the essence of life "can never be ascertained nor even guessed at, by mortals" (Haller, 2005, p. 19), and life is regulated by laws "peculiar to vitality alone" (p. 19). In Hahnemann's theory, "diseases were 'dynamical derangements' of the organism's vital force, and the power to remove them came only from agents that were capable of producing a similar derangement of the healthy body" (p. 19). Curing was effected by applying the specific substance that dynamically altered the body in its healthy state and revealed the same symptom.

²⁹ The proving is considered by James H. Cassedy (1999), a historian at the National Library of Medicine, as a practice that started in the history of clinical trial the early use of simple control groups, systematic and quantitative procedures, and some of the first application of statistics in medicine.

Theoretical differences aside, the most fiercely criticized aspect of homeopathy was, and indeed, continues to be the dilution method. Hahnemann claimed that because the diseased body was very sensitive, even the smallest dose of a homeopathically-prepared remedy should be enough to overcome the disease. The dilution method was to mix a single drop of tincture with ninety-nine drops of water and shake vigorously. However, Hahnemann did not use the infinitesimal doses until his senior years. It was his disciples that really developed the high dilutionism that homeopathy was later to be most associated with (Haller, 2005).

Hahnemann placed homeopathy as one of three distinct systems of his contemporary medical treatment, the other two being allopathy and antipathy. He coined the word allopathy to refer to treatment that used remedies to produce effects different from those produced by the disease. For example, regular medical practice at that time believed that the disease could be drawn from its original source to the skin where it could be treated topically. Thus, an allopath at that time often employed bloodletting, burning to inflict blisters, or leeches. Or the doctors “expected the medicine to produce forceful effect upon the body to confirm its healing powers,” forceful effect meaning “purge, vomit, blister or salivate” (Haller, 2005, p. 70). The antipathy referred to treatment to produce an opposite effect from the original symptom, such as using opium for pain, or cold water for burns (pp. 20-21), which relied on “experience, primitive reasoning and principle of antagonism” (p. 21). An unsettling example was doctors of galvanism who used electric stimulation to restore feeble and paralyzed limbs.

Such was the stage of medical development in the 19th century. The treatment of regular medicine was often ineffective and harmful, relying on bloodletting, purging, burning, blistering or mercury, which had the name of “heroic medicine.” These medical “cruelties” motivated Hahnemann to find alternative procedures. Because dangerous medical treatment itself was often the direct cause of the patient’s death, patients of homeopaths often had better outcomes than those of regular doctors, and during the epidemic period of cholera, death rates in homeopathic hospitals were often much lower than in regular hospitals. These reasons contributed to the acceptance and even popularity received by homeopathy in the 19th century.

From Germany, it spread to other European countries in the early nineteenth century and was brought to the United States in the 1820s, arriving first in New York City. The process was not without obstacles, however. For instance, in 1819, Holy Roman Emperor Francis I ordered that the homeopathic method should be generally and strictly forbidden (King, 1905). However, everywhere, homeopathy developed a network of converted regular physicians and well-off and well-educated patrons.

Haller (2005) presents three factors that contributed to the acceptance of homeopathy in the United State. First, as mentioned above, the cholera pandemics of 1832 and 1849 provided homeopathy a platform where its curing performance unmistakably exceeded that of regular medicine. Haller (2005) agrees with several other medicine historians that, at the same time, a popular dissatisfaction among both physicians and patrons with regular medicine, especially with “heroic medicine,” motivated the search for alternative medicine and brought a migration of regular

physicians to the New School reform. Second, in 1833 French translation of a homeopathic classic, followed immediately by an English translation, made homeopathy literature much more accessible and comprehensible than what had been achieved by German editions or the early English translations of poor quality. The spread of these materials generated more disciples. Third and, according to Haller, most significantly, there was the “focus of Hahnemann and his followers to a more metaphysical view of matter and spirit” (p. 66).

The development of homeopathy in the 19th-century United States paralleled other non-medical social trends, such as “the progressive secularization of thought, particularly with the impact of science and technology”; “the influence of European philosophy and literature; the emergence of a Unitarian and liberal Christian culture; and a more critical approach to conventional wisdom” (Haller, 2005, p. 4). This social context rendered the appealing of homeopathy profoundly cultural, as Haller depicts in the following passage.

Homeopathy met this crisis of faith by building a more personal and intuitive belief in healing that was urban, feminized, individuated, and spiritual. It presented itself as a new “romantic” medicine that healed the body as well as the soul; reassured Americans that the universe remained governed by laws; offered a cohesive worldview to offset the fragmentation of the body that came with the newer laboratory sciences; and reinforced habits of purity, benevolence, hygiene, and self-control. (pp. 4-5)

This emphasis on a spiritual rather than material level is what Haller argues distinguishes American homeopathy from its European predecessor, which was “predominantly eclectic in theory and practice” (p. 4).

Hardly any historical study of homeopathy goes without mentioning the social

class of the patrons of homeopathy, most of whom concentrated in urban middle and upper class American families (Abbott, 1988; Haller, 2005; King, 1991; Rothstein, 1972). The metaphysical and unorthodox inclination of homeopathy was more likely appreciated by this population group. The homeopathy instructions of exercise, diet, hygiene, and self-control were more acceptable and likely affordable for them. Rothstein also quoted a contemporary journal article that pointed out the aversion to taking “nauseous and bitter medicine” made homeopathy preferred by the well-educated, established and “more to the purpose, the *wealthy*”(cited in Rothstein, 1972, p. 160; emphasis in original). In a significant way, the network of social elites with power and wealth provided homeopathy with sustaining patronage and supports, “a degree of success and longevity unattainable by the other social movements [of medicine), and made it a far greater threat to the regular profession” (Rothstein, 1972, p. 165).

The major and arguably most damning criticism homeopathy received was the efficacy of its therapy, especially through its use of highly diluted drugs. Homeopathy advocated nurturing the vital force within the body to do the healing. Critics thus questioned whether it was, in fact, nature or the homeopathic treatment that did the actual curing. King (1991) quotes a 19th-century physician Jacob Bigelow who argued that the relative success of homeopathic treatments versus those of regular medicine was due more to the fact that regular medical treatments, such as heroic medicine, killed too many patients unnecessarily, rather than the efficacy of the homeopathic treatments themselves, much less the validity of the homeopathic doctrines. This

appears to have been a view shared by King also, since King described Bigelow as “one of the truly great regular physicians of the early nineteenth century, [who] recognized the real issue, although his comments have never received the attention they merited” (1991, p. 167).

Homeopathy in Michigan

Two sources used in this section are worth mentioning in particular. One is the chapter “The Homeopathic Medical College” in Volume Two of *The University of Michigan: An Encyclopedic Survey*, edited by Wilfred Shaw and published in 1951. That chapter was written by Hugh M. Beebe, who was appointed assistant medical director of the Homeopathic Medical College by the Regents of the University of Michigan in 1916. Another document is the book, *History of Homeopathy and Its Institutions in America*, published in 1905, and edited by William Harvey King, Dean of the Faculty in New York Homeopathic Medical College and Hospital. This history has a long subtitle on the inner cover page of the book: “Their [homeopathy institutions in America] Founders, Benefactors, Faculties, Officers, Hospitals, Alumni, Etc., with a Record of Achievement of Its Representatives in the World of Medicine.” It is an effort of four volumes, covering the history and practice of homeopathy in every state and Washington D.C. It has one volume on homeopathic medical schools and another volume containing lists of homeopathy practitioners. Twenty-seven authors contributed to this extraordinarily exhaustive project, among whom were Willis Alonzo Dewey (Ann Arbor), Daniel A. Maclachlan (Detroit), Wilbert B. Hinsdale (Ann Arbor). These two pieces present the

history of homeopathy from the view of its practitioners.

According to the chapter on Michigan written by Thomas Lindsley Bradford (Philadelphia) and included in the history compiled by King (1905), homeopathy was first established in Michigan sometime between 1841 and 1843. The Michigan Institute of Homeopathy was set up in 1847.³⁰ There were only eight practitioners in the state, practicing in seven towns, all in the southeastern part of the state. Bradford particularly mentioned that “One of the most noticeable facts in connection with early homeopathy in Michigan was that almost every one of its pioneers was a converted allopath, an excellent practitioner and a man of influence” (King, 1905, vol.1, p.322).

It appears that the early homeopathy profession was closely organized because Bradford’s history reports very specific data on the number of practitioners and the towns in which they practiced. According to the statistics provided, 1858 saw 58 practitioners in 33 towns; 1870, 219 practitioners in 125 towns; 460 in 1896 and 501 in 1904 respectively in every settled town in the state. It is noticeable how slowly this profession developed in the first decade, and then gained great momentum between

³⁰ An important backdrop for this Institute’s establishment was the 1846 State statute on the regulation of the medical profession. Chapter 36 under Title VIII defined the incorporation of the Medical Society of the State of Michigan and county medical societies, and authorized them to train medical students, and issue licenses for physicians and surgeons. The state medical society was the continuity of the Medical Society of the Territory of Michigan approved by the Territory governor and judges in 1819. Only physicians and surgeons of regular standing in the state medical society or in some county medical society organized according to law can form county Medical Society (Sec.4: 169). The Section 36 stipulated that practitioners not duly licensed should be considered as guilty of misdemeanor and fined. However, in the published 1846 Statues, this section was noted at the front as struck out. Wilbert Hinsdale (1905) attributes this last minute revision to friends of homeopathy. Of all historians writing on the homeopathy controversy at the University of Michigan, only Beebe and Hinsdale mention this statute in their work, even though it constituted a crucial obstacle to the practice of homeopathy in Michigan.

1858 and 1870.

In 1871, a private homeopathic medical college was started in Lansing, but lasted only one session. In 1872, the Detroit Homeopathic College was established and operated for only four years. Both institutes were related to the battle that overtook the University of Michigan. It was not until 1875 that the Homeopathic Medical College was established within the University at Ann Arbor.

Although the homeopathic profession grew from 8 practitioners to 219 in merely two decades without a school of homeopathy, institutionalizing a process of training in a professional school was the primary concern of this profession during its early years, and its leaders looked up to the state higher learning institution, the University of Michigan.

1840s to 1850s: Homeopathy on the Legislative Agenda

According to Beebe's history on the University's homeopathic medical college, as early as 1848, the practitioners and patrons of homeopathy in Michigan petitioned the legislature and the University, "setting forth their rights and claims, to the end that homeopathic instruction be included in the curriculum of their state institution" (Beebe, 1951, p.1003). In 1849, the Michigan Institute of Homeopathy appointed a committee to meet the Regents of the University and plea for a professorship of homeopathy in the medical department which was not yet formally opened until October 1850 (Beebe,

1951, p.1003).³¹ On the side of the legislature, Hon. Thomas B. Church,³² chairman of the judiciary committee received “sundry petitions praying for ... the establishment of a professorship of homeopathy in the University of this State” (Beebe, 1951, p.1003) He suggested this question be referred to the Board of Regents, the first cohort having just recently been publicly elected under the Constitution of 1850. Meanwhile, the committee on education of the legislature also received several petitions.

In the Regents’ proceedings, homeopathy firstly appeared on April 22, 1852. A record mentioned that Regent Kingsley “presented a memorandum from citizens of Michigan in favor of the establishment of a Homeopathic Professorship in the Medical College.”³³ The memorial then was referred to the Executive Committee of the Board. That was only the second meeting of this new board sworn into office on January 1 that year, but they were no strangers to the homeopathy issue. Dr. Zina Pitcher, a Regent from the previous board, was entrusted to pass a memorial to the incoming officers about the transactions of the board from 1837 to 1851 (Shearman, 1852, pp. 325-326). This document, which zealously attacks the homeopathic petitions and the petitioners, reads:

³¹ Most historical texts, including university history, homeopathy history, and the relevant legal history, mention only the petition of installing homeopathic professorship in the medical department of the University. However, Hinsdale (1906) and Beebe (1951) both briefly mentioned that the petitions included one to eliminate the medical department and open a homeopathy school. The reference to this militant stance on the side of the homeopathy profession is consistent with observations in homeopathy history that one weakness of the profession’s action was internal disagreements over issues such as these. This stance also explains the great agitation caused on the side of traditional medicine and those practicing it.

³² According to Beebe, Thomas Church also successfully repealed Chapter 36 of the 1846 Statutes. The whole chapter was wiped out in the 1851 Statutes.

³³ For quotations from the Regents’ proceedings, page numbers will not be cited in this dissertation when dates of the particular Regents’ meeting are provided.

Shall the accumulated results of three thousand years of experience be laid aside because there has arisen [sic] a sect in the world which, by engrafting a medical dogma upon a spurious theology, have built up a system, so called and baptized it homeopathy? Shall the high priests of this spiritual school be especially commissioned by the Regents of the University of Michigan to teach the grown up men of this generation that [the ridiculous practice of homeopathy]? (Shearman, 1852, pp. 325-326).

Hinsdale and Beebe³⁴ disagreed on whose opinion this attack represented. Hinsdale presented this view as that of the Board since this memoir was endorsed by the Board. Beebe (1951) intended to make a point that the sole author of this memoir was Dr. Pitcher, a Detroit physician, and it was likely that he was expressing his personal views rather than the considered opinion of the entire Board. Both scholars made valid points. The opinion included in the memoir legally held the Board accountable to it. Meanwhile, six pages of the total 14-page memoir were spent on spelling out the difference in principles, body of knowledge and practice between traditional and homeopathic medicine. There is no doubt that its author seized this opportunity to express his strong opposition to a new school of practice in his profession and to exert his influence on the incoming board.

According to UM historian Burke Hinsdale's history and biographical sketch (1906), this Regent author, Zina Pitcher, was a doctor or, in the vocabulary of homeopathy, an allopath. He served in the army after receiving his degree of Doctor of Medicine, and was eventually made President of the Army Medical Board in 1835. He

³⁴ Although Hinsdale and Beebe were colleagues and both wrote on the history of their college, Beebe's work, which came out later, does not cite Hinsdale's history as a reference. This gives these two history pieces certain independence from each other for the purpose of fact triangulation.

was appointed a member of the first Board of Regents in 1837, and served in that role with successive reappointments till 1852. He was instrumental in establishing the Department of Medicine and Surgery at the University – such a high priority that it was only the second department created after the Department of Literature, Science and the Arts. In 1852, at the end of his service as Regent, Pitcher was honored by the University with the appointment of Emeritus Professor in the Department of Medicine and Surgery. In this position, Pitcher continued his active involvement in the department, particularly by continuing to provide clinical instruction. In 1857, Pitcher recommended that the Board appoint a clinical instructor and when it did, it was he who was given the appointment. His title changed to superintendent of clinical instruction in the University in 1858. His clinical teaching took place in a hospital in Detroit for three summers until 1859 (Shaw, 1951). During this period of time, he constantly conveyed to the Regents his view on clinical instruction through occasional and annual reports.³⁵

Outside of the University, Dr. Pitcher was a very influential figure in both political and professional arenas. He was Mayor of Detroit in 1840, 1841 and 1843. During his second term, he was instrumental in petitioning the state legislature and enacting a law to authorize the establishment of public schools in Detroit (Pioneer Collections, vol , 4, p. 433). For many years, he was editor of *The Peninsular Journal of Medicine*. He started attending the annual meeting of the American Medical Association when it was

³⁵ Pitcher died in 1872 after suffering a chronicle disease for 5 years. He was active as a physician until at least 1867. Last retrieved on July 3, 2010 from <http://www.elmwoodhistoriccemetary.org/pages/pitcher.html>

founded in 1847, and became its tenth elected president. The American Medical Association was known for its active involvement in public policy about medicine and medical profession.

Pitcher was no stranger to shaping public affairs through influencing legislature. In the chapter contributed to King's history by Wilbert Hinsdale, the last dean of UM's Homeopathic Medical College,³⁶ Pitcher was believed to be involved in convincing a house representative to introduce a bill in the legislature in 1846, which required physicians and surgeons to be licensed by state and county medical societies. Section 36 particularly stipulated that physicians and surgeons unduly licensed be considered as guilty of misdemeanor and subject to fine (see footnote 30). This was a year before the establishment of the Michigan Institute of Homeopathy. An influential proponent of homeopathy was somehow informed, and managed to remove Section 36 at the last minute. This action of removal was added as a note together with many other changes at the front of the publication (Mich. Rev. Stat., 1846). Nevertheless, the law that bestowed exclusive privilege to those who "had been longest organized as a state medical body" remained (Hinsdale, 1905, vol.3, p.88).

According to Hinsdale (1906), this legislative experience and the danger of enforced discrimination spurred the homeopathists to be more aggressive in pursuing

³⁶ After the Homeopathic Medical College was absorbed into the Medical School, Hinsdale retired as the Dean, but continued to work in the University's museum of anthropology for another twenty years to pursue his interested in anthropology, especially native history. He was later called the Father of Michigan anthropology. His rigorous scholarship is reflected in the history he wrote on the Homeopathic Medical College, which I find very accurate in details.

legislative enactment in their favor. Hinsdale (1905) calls the 1846 statute on the medical profession "Dr. Pitcher's bill," and goes so far to claim that Pitcher changed the medical history of Michigan (p.88). This claim may be an exaggeration, but no doubt, the power of the legislature in regulating the professional field brought home the different sects of the medical profession. The homeopathic physicians committed themselves to circulating petitions and procuring signatures to submit to the legislature of 1851. These physicians may have been small in number, but they seemed to have a broad base of patrons, some of whom either held or went on to hold prominent political positions. Those who signed the pro-homeopathy petitions included a governor of the state, a United States senator and governor of the state for two terms, and a future United States district judge.

The petitions sought to repeal laws of a restrictive character regulating the practice of medicine and to establish a homeopathic professorship in the state university. The house committee on judiciary received these petitions and wrote a report to make suggestions to legislature. A part of this report is quoted below:

The law should bestow no exclusive privileges upon medical practitioners of a certain school. The cause of science cannot suffer, but must be eminently promoted by free inquiry and investigation. All laws with tendency to favoritism are, in the opinion of the committee, not only subversive of the great constitutional guarantee, but are repugnant to the genius and spirit of our institution. As a large portion of citizens of the highest respectability and intelligence favor and adopt the theory and practice of both schools, they have a right to demand that no invidious distinction shall be made by the laws, but that all systems shall be placed on an equal footing. (Hinsdale, 1905, vol.3, p.88).

The restrictive law of 1846 in question was successfully repealed in 1851. The whole section on regulating the medical profession was removed. The matter of

establishing a homeopathy professorship was referred to the University Regents, who were newly elected, “fresh from people” in the words of Thomas Church, chair of the house committee on judiciary. Now, we are at April 1852, the second meeting of the first publicly elected Board of Regents, the beginning point of the “forty years” in which “the homeopathic controversy furnished the trial material which, at last, made hard and fast the position of the Board in relation to the lawmaking and judicial bodies in Michigan” (Beebe, 1951, pp. 1003-1004).

If we look at the composition of the Board of Regents in 1852, the overlap with the legislature and medicine is impressive (Hinsdale, 1906, pp. 168-184). Of the eight regents, Patterson practiced medicine until 1875 when he retired; Upjohn was a surgeon who later received the honorary degree of Doctor of Medicine from the University; Farnsworth, being the only elected regent of the outgoing board, had a law education, and served on the Legislative Council of the Territory from 1834 to 1835, as State Chancellor from 1836 to 1842 and Attorney-General of the State from 1843 to 1845; Moore was a businessman, a member of the Convention that framed the 1850 State Constitution, and elected Senator in 1852 to chair the Committee on Public Education during his term; Kingsley was a lawyer with a long and prominent career in legislature, member of the Legislative Council of the Territory from 1830-1834, state house representative in 1837, 1848, and 1869-1870, state senator in 1838, 1839, and 1842, and also a member of the Convention for the 1850 State Constitution, in which he served on the Judiciary Committee; Ely was a businessman, and a state house representative from 1835 to 1837 (died in 1854, vacancy unfilled for the rest of his

term); Palmer had been a principal for several academies before he was elected Regent; Parsons was a county officer before he became state senator in 1847 and 1848, elected Lieutenant-Governor in 1852, and became Governor in 1853 when he resigned the regent position. Northrop filled in the vacancy left by Parsons, himself being a Presbyterian pastor.

The first publicly-elected board with their great familiarity with the legislature did not take action after passing around the memorial of the homeopathsists' petitions. On February 12, 1855, the legislature passed a homeopathy proviso added to Chapter 132, Section 5 of the 1851 Act to Provide for the Government of the State University (1872, 1163-1164):

The Regents shall have power to enact ordinances, by-laws, and regulations for the government of the University; to elect a president, to fix, increase, and reduce the regular number of professors and tutors, and to appoint the same, and to determine the amount of their salaries: Provided, That there shall always be at least one professor of homeopathy in the department of medicine. (pp. 1163-1164)

The Regents reacted in their March meeting, and appointed a three-person committee, composed of Patterson, Northrop and Moore, to examine this issue and report to the Board at the next meeting. In their June meeting, Patterson, the chairman of the committee, reported progress on the subject but requested more time to report. In 1856, a converted homeopathy physician Elijah Drake³⁷ applied to the state Supreme

³⁷ According to King's history, Drake started practicing homeopathy between 1853 and 1854. It is not clear whether Drake represented the group of the homeopathsists at his 1856 petition, but in 1858, he was noted as the secretary of the Michigan Institute of Homeopathy in the Regents' June meeting proceedings (p.748), when he delivered a memorial on homeopathy professor appointment.

Court for a mandamus to compel the University to comply with the legislative act, and thus started the decade-long litigation process around the issue of teaching homeopathy in the University.³⁸

The court hesitated at first to accept this case due to the doubts of some of the judges who questioned “whether the court was empowered to grant the application upon such a showing, in such a case” (Cudlip, 1969, p. 26). Then it yielded to the application on the condition that answers from the University should be solicited first. The response from the Regents questioned the right of Drake as “an individual citizen” to move this action on the University, the sufficiency of the evidence, and the constitutionality of the proviso.

With regards to the alleged incapacity of Drake, the Regents argued that it should be the duty of the attorney-general of the state to move against a public body or corporation should there be a cause of complaint. In response, Drake’s counsel stated that the matter in question was that a public body or officers of this state neglected the performance of some duty imposed upon them by law, which interested the citizens generally. Therefore, the right of every citizen of the state to seek after court action should be sustained both by principle and authority. The court acknowledged that the

³⁸ The prominent legal scholar of administrative law, E. Blythe Stason contributes a chapter “The constitutional status of the University of Michigan” to the most authoritative institutional history of the University, *The University of Michigan: An encyclopedic survey* (1941), edited by Wilfred B. Shaw. In that chapter, Stason analyzes the significance of each homeopathy court case vis-a-vis the confirmation of the constitutional status of the University. My research and analysis relies on the Stason article, together with Cudlip’s publication covering the legal aspects of the University’s history up to 1969.

English courts did not provide precedence, and the American courts demonstrated practice of both principles. Some acted on “the relation and motion of a private citizen of the state,” providing that the matter in question concerned the interest of the public at large and a mandamus is the proper remedy. Others followed the principle that “to entitle an individual citizen to be heard as a relator and on his own motion, he must show that he has some individual interest in the subject matter of complaint which is not common to all the citizens of the state” (p. 27). The Michigan Supreme Court concluded that the case at hand required the action of the attorney-general. This explains why the title of this case is “The People ex rel. Drake v. The Regents of the University of Michigan.” By this act, the court denied that an individual citizen can sue a public corporation about a damage committed by the latter to public interest rather than a damage to his or her personal interest.

After so responding to the University’s first challenge, the court opinion read: “The views we have expressed would seem to make it unnecessary to decide the other questions presented, particularly the constitutional question” (p. 28). Although the Regents claimed that the proviso was unconstitutional, the court argued that the Regents had taken action toward the end stipulated by the proviso out of their respect to the legislative will. In this way, the court avoided the constitutional question, but focused on whether there was sufficient evidence to prove that the University disobeyed the legislation. The court reiterated the time-consuming but sensible approach the University took to investigate in Europe and America in search of a candidate, and also proposed a solution to both install such a professorship in its own

medical department and harmonize the two combating new and old systems. It then concluded that although there was not “any visible result of their [regents’ committee] labors, any clear evidence of their activity and zeal in the prosecution of their duty,” neither was there evidence of “unnecessary delay or lack of good faith” (p. 29). The court accepted the University’s justification that more time was needed, and denied the application of mandamus. The court also accepted the University’s claim that their uncertainty of the constitutionality of the proviso caused hesitation and thus delay, but it did not pick up the hard ball to judge on the constitutionality of the proviso.

In spite of this loss, the homeopathsists persisted. In June 1858, at the third meeting of the second cohort of the elected Board, Elijah Drake, then Secretary of the Michigan Institute of Homeopathy, passed a memorial relative to the professor appointment, which was “laid on the table” (p. 748). There were ten regents on this Board because the judicial district rose to 10. Six regents had law backgrounds³⁹: Parson, Baxter, Bishop, Johnson, McIntyre and Spaulding. McIntyre was a county judge before he came to Ann Arbor and became a successful banker. Of the rest, Bradley was a Methodist preacher, Brown was a mercantile, Ferry a machinist and engineer, and Whiting a businessman of lumber.

On March 29, 1859, at the Regents’ meeting, McIntyre “presented the petition of a large number of citizens from different parts of the State” on the same issue (pp.

³⁹ This count does not include John Van Vleck, a pastor, who only attended one meeting in 1858 before he resigned for health reasons. His replacement, Oliver Spaulding, was a lawyer.

834-835). Regent McIntyre then moved to have a three-person committee to “procure and employ” the prayed-for professor in the Department of Medicine at a certain salary beginning the next fall semester in October. Regent Bishop immediately rejected this motion and proposed instead that the committee should inquire into the constitutionality of the 1855 legislative act. Regent Baxter suggested the two proposals should be combined and his motion was adopted. Baxter suggested that the special committee consisting of Regents McIntyre, Whiting and Brown should have two tasks. One was to “consider and report at our next meeting upon the obligations and importance and propriety of appointing” the professor in question “in accordance with the petitions of a large number of the citizens of this State and also the enactments of our Statute” (p. 835). The other was to procure the decision of the state Supreme Court about the constitutionality and legal obligation of the 1855 Act.

The disagreement within the Board was not ameliorated by Baxter’s eclecticism but rather, provided a drama that appears perplexing to contemporary perspectives. The next day, March 30, when the meeting was reassembled, Bishop stated that the special committee on the homeopathy case clearly favored the appointment of such professor. Since both sides of the arguments should be presented in front of the Supreme Court, he proposed to have another committee appointed to employ counsel and present to the court the unconstitutionality of the 1855 Act. The motion was laid on the table. On the third day of the meeting, March 31st, Bishop took off his motion in the morning. Immediately after, Regent Brown proposed a new resolution which was adopted. This new resolution authorized McIntyre on behalf of the application and

Bishop as opposed to it to employ counsel and present to the Supreme Court each side of the case. In the afternoon, things made a sharp turn once again. Regent Brown, who was appointed to the three-person committee on the 30th, had another motion passed to rescind the resolution on the 30th to appoint the committee which had been supposed to “consider and report at the next meeting” upon “the question of establishing a Chair of Homeopathy” (p. 841).

As a result, the three-person committee was dissolved. The committee now had only McIntyre and Bishop, and the issue left on the table was the constitutionality of the proviso, but not the appointment of a homeopathy professor. Things had developed in a way agreeable to Bishop, but the related resolutions adopted were raised by regents other than himself.

At the Board’s next meeting on June 28th, McIntyre submitted a written report, while Bishop made a verbal report. At the same time of submitting his report, McIntyre also presented the protest of John Ellis⁴⁰ and 46 other physicians. McIntyre’s report was on making out and presenting to the Supreme Court “a case involving the constitutionality of the Act of ’55” (p. 848), but it actually contained both McIntyre’s investigation of the possibility of making a case in front of the Supreme Court, and his indignation at the exclusion of homeopathy from the University.

According to McIntyre’s report, the majority of the Board believed a case could

⁴⁰ John Ellis practiced homeopathy and was also a noted surgeon of his time, a leader in the movement to secure a homeopathy professorship in the University.

be made in front of the Supreme Court following the civil procedure statute, which stipulated that a controversy could be submitted without a civil action. McIntyre disagreed but was nevertheless assigned the task of investigating the possibility, with Bishop acting as almost a sidekick. McIntyre had conversations with the Attorney-General and several legal counsels, who clearly told him there was not a case to be made unless an indictment against the Regents was taken representing the Regents as refusing to comply with the law, which was the very thing that the Regents wanted to avoid. Similarly, the legal judgment of other law professionals he consulted saw no case either in the Board's question. In brief, firstly, these professionals did not think the obligation of the Board to obey the 1855 legislative act was questionable given the legitimate procedure of the act being passed by the Legislature and approved by the Executive. Secondly, neither did they think it could be valid to challenge the constitutionality of the homeopathy proviso in the 1855 act, while accepting the rest of its provisions on the government of the University and crucial authorities of the Board with regards to its being a corporate body, and its power in hiring president and faculty, and deciding on salary, etc.

After the report on his investigation of the legal opinions, McIntyre spent the other half of the report on his incomprehension of the resistance to install a homeopathy professor in the medical department. His report revealed that the six professors in the medical department had all threatened to if a homeopathy professor

was installed.⁴¹ McIntyre agreed that the supporters of homeopathy made a point in accusing the University of choosing the side of the six medical professors and neglecting the request of “fifteen hundred of the most intelligent and influential citizens of Michigan” and the desire of “many thousands more” (p. 858). He called attention to the reputable curing record of homeopath practice, and argued that any system which had “so fully established its claims” should be encouraged to “be a science.” He used the then already well-established theories of blood circulation and vaccination as examples to argue that the historical rejection those two theories experienced was the same as that to homeopathy, both cases having faced hostility based on previous ignorance. McIntyre called the resistance to homeopathy by the regular practice “tyranny,” and accused the “self-styled regular practice” of lack of love for “their race” for not allowing the spread of more effective treatment method through university teaching.

In the end, this three-month event, starting from the petition submitted in March, ended with no action taken and no resolution produced. This particular Board rejected the internal and external requests of moving the medical department to Detroit, and the external requests of admitting female students. In both cases, a clear resolution was announced, but in the homeopathy case, because the request existed in the form of a state statute, the denial was simply a continuous stagnation. The next six years were quiet regarding the homeopathy issue in the University’s official record and

⁴¹ That reaction may not be surprising, given that this was a medical department largely put together by Dr. Pitcher, and of the first four professors, two were his students, and another two were recommended by him to the position. *Past leaders: University Michigan Health System*. Retrieved July 10, 2010 at <http://www.med.umich.edu/1busi/plrc.htm>.

the histories of Michigan homeopathy. The Civil War, the ostracism of President Tappan by the Board of Regents, and fractionalism among the Michigan homeopaths may have all contributed to this lack of activity.

1860s to 1870s: Homeopathy as a Condition of Appropriation

It was not until March 1866 when the issue of a homeopathic chair in the University was picked up once again, and again it was through a petition to the Regents' meeting from the Michigan Homeopathic Institute, submitted by Drs. Drake and Woodruff. The Board that received this petition took office in 1864, and President Haven assumed the position in late 1863. In his annual report of 1864 and 1865, Haven praised the internal harmony of the University, perhaps still having in mind the turmoil caused by the ostracism of President Tappan by the previous Board of Regents. For various reasons, the Regents did not react to the petition. This Board convened less frequently than its predecessor.⁴² The number of Regents was also changed back to eight, and they had staggered terms to give stability to the Board. For the sake of brevity, only Regents who had considerable impact on the homeopathy controversy during the later years are introduced here.

The committee on medical department was composed of Regents Knight,⁴³ Stockwell, Gilbert and Joslin, and the Executive Committee had Regents Walker,

⁴² The frequency of their meetings for each year was as follows: 1864, five times; 1865, four; 1866, three; 1867, three; 1868, five; and 1869, five.

⁴³ Knight joined this committee in February 1864 to replace Sweetser who died after only a month on the Board.

Johnson and Willard. Knight (1864-1867) was once a lawyer, then preacher and teacher and lawyer again. He served several years on the Board of Education. While being a Regent, he was the prosecuting attorney of Wayne County. Knight was on the medical committee for only a year. In 1865, Stockwell (1865-1871) was appointed by the Governor to fill the vacancy left by the diseased Sweetzer. Stockwell was a physician. He was instrumental in founding the Michigan State Medical Society in 1866 and served as its first president. He was “prominently identified with the professional interests of the state” (Hinsdale, 1905, p. 190). Gilbert (1864-1875) was a businessman in lumber and shipping and later on, banking. He was a lower house representative in 1861. Joslin (1864-1867) was a minister. Walker (1864-1881) was a lawyer, and once the secretary of the Detroit Board of Education. He was a member of the state house of representatives in 1867. Regent Walker drew the resolution for admitting women students and actively favored the establishment of the Homeopathic Department. Johnson (1858-1869) was the only Regent of the previous Board that remained, and he was a lawyer. Willard (1864-1873) was once a minister. After his religious belief changed, he became a college Latin professor. Starting in 1856, he served on the Michigan State Board of Education for six years. In 1867, he was a member of the state house of representatives, and chairman of the committee on education. In 1872, his last year as a Regent, he was elected to the 43rd Congress, and re-elected in 1874.

Another explanation for the lack of reaction from the Regents to the homeopathy request could be the Regents’ struggle with the financial difficulties of the University. For instance, in June 1865, Michigan State Dental Association communicated

with the Board of Regents about adding a chair of dental hygiene in the medical department. President Haven in his annual report delivered in September 1865 optimistically expected the addition of two dental professorships to “supply a great demand,” to satisfy “the entire public” concerned, and to complete the medical department. The report of the Regents’ committee turned out to be disappointing: the position was considered “inexpedient” due to financial difficulty. At the Regents’ meeting of 1866, a resolution was made to address to “the people of the State”⁴⁴ about the financial situation of the University. According to the autobiography of Haven, he delivered the address to an audience consisting of both houses, and proposed the levy of a twentieth mill tax. So was the legislative act passed in March 1867 (with Willard and Walker in the lower house that year), but with a rider about the installation of a homeopathy professor.

In the middle of chaotic resignations submitted from the medical department and hasty nominations to fill the vacancies, the Regents resolved in their April meeting to comply on the condition that the action “shall in no way interfere or conflict with the Medical Department of the University as at present conducted” (p. 198). Haven wrote in his autobiography that “such was the intense hostility to homeopathy on the part of the professors of the medical department that no possible way could be devised for

⁴⁴ The regents’ proceedings in 1866 were consistent with using “the people of the State.” The librarian Andrew Ten Brook who pleaded to the Regents the financial needs of the University requested an appeal to “the public” or to the “State legislature” (187). However, in 1867, after the legislature passed the act on university appropriation with the homeopathy rider, the Board felt the need to communicate to “the people and the Legislature” (200).

carrying out the law which was deemed to be safe” (Haven, 1883, p. 152).

On the second day of the April meeting, 1867, the Board deliberated and arrived at the conclusion:

[T]he appointment of such a Professor to be a member of the Faculty of Medicine, as now constituted, would...not accomplish the result of a proper development of the principles and practice of Homeopathic Medicine, and would endanger, if not entirely destroy the existing department, built up at so much expense, and with so much labor, and with such distinguished success.

They resolved to establish a separate School of Homeopathy within the state, but in a location other than Ann Arbor. With a shrewd calculation of the timeline for the University to actually receive the appropriation, the Board believed there was time to convey the rationale of this plan to “the people and the Legislature” and also confirm that this plan could be acknowledged as compliance. At the end of this meeting, the Board prohibited fees for private instruction during term time collected by professors, and increased 15% of the salaries for all professors and assistant professors. The relief felt by the regents because of the prospect of receiving state appropriation and their spirit to advance the university properly is vividly revealed through these two resolutions in the proceedings.

Unfortunately, the process of actually receiving the state aid was nothing but eventful. It took the Board another year until March 1868 to arrive at more specific resolutions which even stated the acceptance of the state aid with condition attached. The second resolution in this proceeding stated that “there be organized in the Department of Medicine a School, to be called the ‘Michigan School of Homeopathy,’ to be located at such place (suitable in the opinion of the Board of Regents) other than Ann

Arbor..." (pp. 267-268). The fifth resolution named the professor to be appointed in this school as Dr. Charles Hempel, a name recommended by "numerously signed petitions" in April 1867 (p. 196). This action, however, was not considered as compliance by the auditor-general, who refused to issue warrant for the University to receive the state aid from the state treasurer. The Regents then took the auditor-general to the state Supreme Court in 1868 for not issuing the appropriation. The court was split. Two judges disagreed that the University had complied, while one affirmed that it had and one gave no opinion. The case for the University was lost. In 1869, the attorney-general took the Regents to the state Supreme Court for not complying with the legislative act. Again, the court did not reach a consensus, and the case for the attorney-general was lost too. The legislation in February 1869 took out the homeopathy proviso, and changed the mill tax to an annual amount of \$15,000. The University received the appropriation levied, and after appealing to the Supreme Court against the auditor-general and state treasurer, also received the fund held in the past year. (Cudlip, 1969; Hinsdale, 1905; Shaw, 1951).

Within the University, opinions were expressed in the Department of Medicine and Surgery through resignation, induced remaining and resignation again. The most elaborated opinions on this issue were President Haven's annual reports in 1867 and 1868. President Haven may not be known as a man of consistency. In his 1867 report, he supported the admission of young ladies to higher learning through a separate state institution and objected to any change made to the University. In 1868, he changed his mind and stated that the University should embrace co-education. In his autobiography

published in 1883, he wrote, “The professorship of homeopathy should, of course, have been optional to the students. In a great university every variety of opinion may be safely expressed and defended” (Haven, 1883, p. 152). In his annual reports of 1867 and 1868, however, he did not accept this professorship so simply.

Haven’s 1867 report dealt with the constitutional right of the Board of Regents to govern the University and the principle of the University for open investigations. He stated that it had been the duty of the publicly-elected Regents to establish the Courses of Study in the various departments and to appoint professors and instructors as they deemed best. He acknowledged that it was impossible to please the variety of opinions of different parties with regards to what should be included in a “thorough instruction in all the sciences,” but he claimed that the sole investment of the responsibility in the Regents had advantage over splitting the power between the Regents and the legislature, because the legislature had a shorter term, various duties other than higher education, and a lack of “personal intimacy” with the University. In this argument of Haven, the comparative stability and continuity of the Regents and their immediacy to the University affairs were framed as advantages in governing the internal affairs of the University, and their being publicly elected was held to legitimize their authority.

Next, Haven developed his argument that only science should be included in university instruction. He maintained that “a School of Medicine as ours” “espouses and teaches no exclusive theory.” What is more important:

[T]his School teaches neither a conglomeration of conflicting theories, nor any one in particular, but aims, in accordance with the time-honored customs of the oldest Medical Schools, to teach the science or sciences underlying or embraced in Medicine and Surgery.

To Haven, the instruction of science should survey all the accumulations of the past on a particular subject and all the ever-opening investigations of the present, and await the developments of the future. For a newly discovered method of treating disease to be acknowledged as science, it had to commend "itself to attention by its reasonableness and success, as to command assent and its proper place in the established science of the Profession." Haven's view of a cumulative development of science idealized the harmony and unity of knowledge development. More significantly, his logic allocated the jurisdiction of knowledge to the established profession, not to the legislature or the Regents, for the new knowledge would need to fit in the paradigm accepted in the profession.

In his 1868 report, Haven stated that the question in front of the Regents was to secure the state grant by complying with the law, or put forth the reasons for not complying with the law and trust the State to remove the condition of the funding. However, his interest in this report was rather to "express what the interests of sound education seem...to require, irrespective of party, or sect." In this report, he further developed his condemnation of "conflicting theories" and wrote of his disapproval of partisanship in terms of both doctrine and interest.

Haven reasoned that conflicts lay not only in the difference of doctrines, but also in their exclusiveness. He wrote in the report, "We do not want in a University professors of special ideas or theories, who believe that their special ideas or theories embrace all truth in their respective schools, and that all outside of their special ideas or theories is false and to be rooted up and condemned." Based on this view, Haven

approved a department of medicine and surgery composed of sub-divisions of anatomy, physiology, pathology, surgery, etc, but not opposing “theories” of allopathy, homeopathy, hydropathy, etc.

Second, he advocated for a science that surpassed partisan interest. He maintained that “the University does not establish a Department of Medicine and Surgery in the interests of any particular class of physicians, or in the interest of conflicting classes of physicians, or with the special purpose of making doctors of any particular kind, or of all kinds, but to teach the science fully and broadly.” To Haven, partisan interest and exclusive theory were closely related. He gave examples of how to avoid problematic appointments by listing titles of professorships, “the very name of which instructs them to be partisan defenders of exclusive theories: for instance, in the Literary Department, Professors of ‘Protestantism’ or ‘Presbyterianism;’ or in the Law Department, Professors of ‘Conservatism’ or ‘Radicalism,’ or ‘Democracy;’ or in the Medical Department, Professors of ‘Allopathy’ or ‘homeopathy’.”

According to Haven, in order to surpass local interests and partisan distinctions, “the Regents, in the appointments of Professors, should, according to their own judgment, select the best men they can secure for the professorships, untrammelled by the dictation of any bodies or parties of men outside of the University, and having no regard to the conflicts among professional men.” At the end of the session reviewing the issue of a homeopathy school, Haven summarized his expectations of the Regents: “And I trust that your honorable body will...according to your best judgment, select liberal and well qualified men, each to give instruction in some natural division of the

great territory of human knowledge and power.” Other than the attitude of being “liberal,” the Regents may not have felt it was easy or even up to them to judge on “well-qualified” or “natural division.”

Haven also left a puzzle of contradiction to the Regents. On one hand, he begged the Regents to “neither select nor reject candidates for professors in the interest of any outside party or association”; but, on the other hand, he conceded to “allow that the Regents ought to respect the will of the people, and must in the end accept the aid tendered by the State on the conditions insisted upon.” In this way, he contrasted the requests made to the University by specific groups and the requirement of law created through legislation, the former being local interest or partisanship and the latter being the will of the people.

While Haven’s concern was with determining the best interest of the University and what should be included in university instruction, the Supreme Court was more practical and interested in how to solve the legal case adequately. When the case was presented at the court in 1868, Judge Christiancy concluded that the only question necessary to the decision of this case was whether the Regents’ action in March 1867 about establishing a school of homeopathy in a place other than Ann Arbor constituted a full performance of the condition of the appropriation. This was also the issue focused on by Judge Graves. Neither of them considered the University’s action to qualify as compliance. What is interesting are their presentations of university operation according to common sense. Judge Campbell disagreed with these two, and Judge Cooley remained silent (Cudlip, 1969).

Christiancy argued that the legislature must have not contemplated this instruction of homeopathy as separated or away from the University in Ann Arbor because they must have been endowed with “plain common sense” of the value of organized higher learning. He considered the University as the whole entity of “all its departments and professorships, its buildings, libraries, cabinets, laboratories, apparatus, and all the other conveniences and property of the institutions [that] had been for years existing...upon the university grounds at Ann Arbor” (Cudlip, 1969, p. 34). Based on this infrastructure and the years of material accumulation, the department of medicine aimed at “the attainment of an education in the medical profession in all its branches” (p. 34). Homeopathy and regular medicine were “two systems differing mainly in their theories of the principles upon which medicines are supposed to operate in the cure of diseases”, but they shared “four-fifths of the entire course of professional instruction...and all the same apparatus, the anatomical demonstrations, and surgical operations, the same material, collections of specimens and other convenience for instruction...” (p. 35). Christiancy maintained that these considerations were what the readers should “naturally suppose would operate upon the minds of legislators endowed with plain common sense” (p. 35). He then derived the conclusion that what the legislation intended for the installation of a homeopathy professorship were the substantial advantages “incident to a direct and intimate connection with the department and the university” (p.35).

Similarly, Judge Graves argued that the intention of the legislature in 1867 should have been consistent with that of 1855, for it “insisted upon compliance with the

first act without any qualification” (Cudlip, 1969, p. 39). This intention of installing a homeopathy professorship within the University should have been so understood by the general public and the Regents because, tellingly, the Regents had actually opposed on the ground that the statute’s requirements were too difficult, consisting as they did “in requiring that there should be brought together, in the same university, and at the same place, professors of opposing schools in the same department” (p. 38). On the other hand, the purpose of the legislature was to “supply a new element of instruction for the benefit of all who should attend the college as situated and established” (p. 39). At this point, Judge Graves drew the line stating that “Whether the action of the legislature in this regard was wise or unwise, whether, if consummated, it would be likely to result in injury to the institutions, is not our province to determine” (p.39). Instead, he restricted himself to rejecting the Regents’ action as compliance.

Judge Campbell argued for the Regents and supported the issue of writ in their favor. He focused on the question “whether any portion of the department of medicine can be established at a place outside of Ann Arbor” (Cudlip, 1969, p. 40). Contrary to Christianity, he argued that no students can pursue at the same time the extensive body of knowledge demanded by two entirely different courses of study. Therefore, “it must always be left to the regents, as the only body which can lawfully carry on the administration of the university, to parcel out the studies as in their good judgment seems best” (Cudlip, 1969, p.40). Similarly, “whether students of one system could profitably attend at the same time the teachings of two conflicting schools, or whether the professors could be wisely or harmoniously amalgamated into one body, is not a

judicial question, but one of administration, to be settled by the authority of the university” (p. 41).

After maintaining that knowledge could be compartmentalized, but that the method of doing so should be the decision of the Regents, Campbell addressed the question of whether the location of a corporation should determine the location of its operations. He gave examples of mining companies, navigation companies, or companies for scientific and exploring purposes, “where nothing is localized but the business offices” (Cudlip, 1969, p. 41). He reasoned that, similarly, in the case of a university, some localities may particularly favor the teaching of certain branches of knowledge. For instance, mining, surveying and geology may be learned either temporarily or permanently “at places where such work is being carried on” or medical teaching may need to take place where hospitals are found (p. 42). The law of 1837 incorporated the University “to be placed on a forty-acre lot.” Campbell contended that it should not be the intention of that law to confine the operations of the University to that quadrangle.

Legal scholar E. B. Stason points out that this case is significant for being the first adjudication involving a conditional appropriation for the University (Shaw, 1951, p. 122). All justices agreed that the legislature could attach conditions to its appropriation for the University, and that the University must meet those conditions in order to take advantage of the appropriation. Ultimately, the proposal of the Regents to have a Michigan Homeopathy School at a place other than Ann Arbor was void, and their request for the Supreme Court to issue writ to the auditor-general and the state

treasurer was rejected.

However, the tides turned in early 1869. At the legislature's biennial assembly, the University's request to remove the rider on the appropriation act was granted. An act was passed to pay \$15,000 annually to the University, instead of the one twentieth mill tax. The University also received the fund held for 1867-1868. This change with the legislature took homeopathy supporters off guard. Through the attorney general, they filed one more request of mandamus at the Supreme Court in October 1868, and learned the court opinion would not come out until after the legislative adjournment (King, 1905). The Regents responded to the court order stating that the legislative section referred to was unconstitutional. The court once again could not reach a consensus. The motion against the Regents failed.

As recorded in the Proceedings of the Regents' meeting, with the state aid in hand and with the removal of its conditional proviso, the Regents refused in August 1869 to pay Dr. Hempel his salary on the ground that the proposed school was void and his appointment was illegal. In September, the Regents rescinded the appointment. The homeopathy supporters seemed to employ no other strategy but legislative interference. With divisions amongst themselves, they brought four proposals before the legislature of 1871, one to increase the appointment of professors to two in Ann Arbor, one to divide the academic year to two terms for the two systems to teach separately, one to add a homeopathic hospital to the request of professorship, and one to support a homeopathic college in Detroit. None of these became law, but it seems that some of them passed the house of representatives.

While the bill was pending before the Senate, the Regents took action too. Two new Regents had come into office the year before: Estabrook and McGowan. Estabrook (1870-1877) was a teacher and preacher, serving as the principal of the State Normal School at Ypsilanti during his tenure as the University Regent. McGowan (1870-1877) was a lawyer, prosecuting attorney of Branch County, and State Senator from 1873 to 1875. Both McGowan and Grant, who would join the Board in 1872, played important roles in securing for the University the 20th mill tax appropriation in 1873 (Hinsdale, 1906).

At the March 27th meeting in 1871,⁴⁵ several days before the ending of the legislature assembly, the Regents produced a memorial and appointed a committee to deliver it to the legislature in the hope of settling the case once for all. In this memorial, the Regents stated their years of effort to harmonize adverse views, provide for instruction in homeopathic medicine and preserve the Medical Department as what it was, but noted that all their attempts had been in vain. The Regents pleaded to settle this issue forever. They requested the legislature to pass a bill which would allow them to set up the school in a city other than Ann Arbor, and provide them with the funding to do so.

According to this memorial prepared on the March 27th meeting in 1871, the Regents' goal was to keep the current Medical Department intact in order to protect its

⁴⁵ Also at this meeting, a memorial was sent in from prominent homeopathic physicians in Detroit, Port Huron and Owosso, asking the Regents to give their support to the bill then pending before the Senate in Lansing.

reputation. They explained that it was impossible to combine two systems in one institution because then this institution would face prejudiced from others in the medical profession:

Such is the system of county, State and National medical associations, and such are the rigid rules of medical colleges and societies, that medical professors connected with such a mixed school would be ostracized from all professional standing in their respective schools, the diploma of the institution would be disregarded, and students would, of course, cease to attend an institution where degrees would not open to them the door of the school of practice in which they believed and had been taught.

No law was passed in 1871 in favor of either the homeopathy supporters or the Regents. Instead, at the June meeting in that year, the Regents received two petitions, one of fifty three members of the House of Representatives (more than half of the total members), and one of twelve members of the State Senate (more than one third of the total members),⁴⁶ which requested “immediate steps be taken to appoint one Professor of Homeopathy in the University.” Also at that meeting, the Regents started working together with homeopathy supporters on the option of opening a homeopathy school outside of Ann Arbor. Several Detroit citizens communicated with the Regents about providing a donation to establish a Homeopathic Medical School in Detroit. The Regents responded that once they were authorized by law to erect and operate such a school, they would happily accept the donation for that purpose, providing the state would furnish sufficient funding. However, this response was not formalized as an adopted

⁴⁶ To put these numbers in perspective, under the Michigan Constitution of 1850, the House of Representatives was to consist of no less than 64 and no more than 100 persons, and the Senate was to have 32 members. This did not change until an amendment was adopted in 1874 (Farmer, 1890, p.99).

resolution.

The same Detroit proposal was raised in the Regents' July meeting in 1871. The proceeding recorded that Dr. Ellis of Detroit, a homeopathic physician, was present and addressed the Board, followed by a "somewhat lengthy and spirited discussion of the resolution." Then the resolution was laid upon the table for a later hour of the session, only to be lost eventually for reasons unknown with two ayes v. four nays. In the following meeting in September, which was the first meeting attended by President Angell, the Regents received a communication from Governor Baldwin, in which he introduced Drs. Ellis and Younghusband to the Board, and expressed the hope that "Homeopathy might be settled by some appropriation on the part of the Board". At this meeting, Regent Walker presented the following resolution which was unanimously adopted:

That we approve the efforts that are being made to establish a Homeopathic Medical School at Detroit, to be eventually connected with the University, and when we are authorized to make it a part of the University by law, with proper provisions for its support, we will administer its affairs to the best of our ability.

The Detroit Homeopathy College was chartered and opened in 1871, with a class of 39 students, and its first annual commencement exercise was held on June 27, 1872 with 19 graduates. The fees of the college were made the same as those at the University at that time (Hinsdale, 1905). A Regents' committee was set up to take charge of any communication on the subject of the homeopathy school. But things were not at peace. The Regents needed to decide whether professors in the Medical Department could hold similar positions in the Detroit Homeopathy College. At this

point, Charles Rynd joined the Board of Regents. Rynd received his M.D. degree from the University in 1859. While practicing medicine, he served on the Common Council and the Board of Education. Hinsdale's history (1906) describes Rynd as active in politics and a delegate to the National Republican Convention at Cincinnati in 1876.

In the Regents' meeting in March 1872, Regent Rynd, then chairman of the committee on the medical department, reported back negatively on any such joint appointment, and presented the following reasons:

Eminent members of the profession in the State, outside of both Institutions, assure us that the partnership proposed is not only injudicious but unwise; that the University cannot afford and does not need the formation of entangling alliances; that professors cannot well serve two masters who live in immediate proximity, and that the best interests of the University demand an immediate dissolution of any relationship which interested persons may have been laboring to affect.

Rynd ended the report by arguing for the best interest of the University:

The best interests of the University demand that the various Faculties shall serve in their respective departments with undivided loyalty; that the very best results attainable shall be produced with such advantages as we now possess, or may be enabled hereafter to control, and that a spirit of enthusiasm for the University may be communicated from professor to student. In this way, and this only, can the Institution meet the reasonable expectations of a generous people.

While a group of homeopathy physicians were engaged in developing the Detroit College, another group was still working on the proposal of having a homeopathy professorship on the Ann Arbor campus. The issue was brought before the legislature once again in 1873. As recorded in the proceeding of the March meeting, on March 24, 1873, the House of Representatives sent a committee to the University to investigate the course of instruction in the Medical Department and to ask for a written

communication specifically in answer to two questions:

First—Is the instruction in the Medical Department at the present time sectarian in character?

Second—What are the reasons, if any, which have influenced the Board in its past action on the subject of Homeopathy?

The Board produced a majority report and a minority report the next day. In addressing the first question, the Regents never claimed that the instruction at the medical department was not sectarian. As they put it, the founders of the medical department and their colleagues, “as is well known, belong to the so-called regular school of physicians, and naturally teach according to their belief.” The Regents praised the instruction for laboring to “afford to all students broad and liberal education in medicine, and to teach *general principles* common to all medical education.” They referred the legislative committee to the faculty’s own testimony with regards to “how far any special doctrines of any particular school have been taught, instead of general principles.” They pointed out that there were homeopathic students in every medical class, and quite a few graduates from that department were then distinguished homeopathic physicians.

To answer the second question, the Regents emphasized that their only concern was “the best good of the institution placed by the constitution and the law under their control.” They reviewed the related legislative acts since 1867, and the Regents’ efforts to comply without destroying the existing medical department. After years of investigation of this issue, they had arrived at the conclusion that it was “entirely impracticable” to teach two schools in one institution because of, firstly, “the intense and irreconcilable feeling of hostility” between the different schools of medicine, and

secondly, the “imperious and perverse” “thorough system of organization existing in the so-called regular school of medicine.” This second reason was consistent with the pleading the Regents sent to the legislature in session in 1871 in the hope of ending the issue once for all. What was added were the less-than-flattering words the report applied to the system of regular medicine, which may reveal the frustration of the Regents in dealing with the medical department faculty and the profession outside of the University. The Regents commented that the obstacles were beyond the state of Michigan or the University, but belonged to “the present position of medical science and ethics in the United States,” which could not be “controlled nor ignored by those who are placed in practical charge of living institutions,” and for which the Regents could not be held responsible. The report concluded by expressing the will of the Regents to cooperate with the legislature, but emphasized that the solution needed to be “practicable.”

Seven Regents signed the majority report, and the eighth Regent, Willard, submitted a minority report. The short report claimed to “[deprecate] any action on the part of the legislature looking to interference with the internal regulation of the University or the general management of its affairs, save by way of resolutions of recommendation,” on the ground that “the Regents ought to be left the sole responsibility of dictating the kind of instruction to be given in every department which the Constitution of the State has confided to their charge and control.”

Willard’s objection had no effect. The legislature in 1873 passed an act providing for two homeopathy professorships in the department of medicine of the University.

Both should receive the same salary and rights and privileges of other professors in the department of medicine. Subsequently, the June meeting of the Regents was full of drama. Homeopathy supporters, Drs. Woodruff and Pomeroy came again to present the names for the two appointments recommended by the convention of homeopathic physicians held in Ann Arbor the month before. The State Medical Society sent a committee to meet with the Board “in regard to the condition and management of the Medical Department of the University.” Regent Willard proposed complying with the law.⁴⁷ Regent Gilbert proposed non-compliance, on the ground that the constitutional right of the University had been infringed upon; he proposed instead to “re-affirm the former action of this Board” and to “take official charge of an independent school of Homeopathy and connect it with the University, whenever the means shall be provided for the payment of its professors.” Gilbert’s resolution was passed with only one nay from Willard.

The split in the Board continued in December. Regent Estabrook proposed to declare the Detroit Homeopathic College a branch department of the University, formally in the name of “the Homeopathic Medical Department of the University of Michigan” and to form a Board of Trustees for its local management subject to the Board of Regents. In addition, he proposed that an appropriation should be made to aid this department. Regent Willard opposed for the reason of inexpediency and the

⁴⁷ According to Hinsdale’s history, Regent Willard supported the installation of a homeopathy professorship in the medical department of the University, but not a Detroit branch.

doubtful legality of this recognition, which was also “contrary to, and subversive of the uniform policy which has governed the Board in keeping the University a unit by avoiding the establishment of branches and by the location of all its departments at one place.” After a discussion, both proposals were laid on the table.

The case was brought to the state Supreme Court by homeopathic physician, Dr. Thayer, through the attorney general. In October 1874, the court’s opinion came out stating that the judges could not bring different views from what expressed before. No order was made.

The stalemate of this seesaw battle came to a breaking point thanks to the 1875 legislative assembly. A bill came before the Senate about an appropriation for a homeopathy department in the University at Ann Arbor. It was sent to the Regents for inspection. The committee on the medical department chaired by Regent Rynd produced a report which suggested a change in the pending bill: flexibility with spending the \$5000 appropriation on such a department. In the same meeting session, the committee proposed to request \$10,000 appropriation from the legislature for a new medical building. Meanwhile, anticipated a deficit for the years 1875 and 1876 was anticipated. The president and the regents composed a petition to the Legislature for an appropriation of \$11,000 for each of 1875 and 1876.

Among six University appropriation acts⁴⁸ passed by the 1875 Legislature was an

⁴⁸ Among the acts were appropriation acts to establish a dental school and a mining school, build a hospital and fund the supply of water to the grounds. There was no appropriation for a new medical building.

act providing for a homeopathic medical college in Ann Arbor with a state appropriation of \$6000 a year designated for it. On April 27, 1875, the Homeopathy Medical School was founded within the University. At the May meeting of the Regents, resolutions were passed to establish the Homeopathic Medical College in the city of Ann Arbor and the two professorships. The resolutions stipulated that students in this college should be subject to the same fees, equal privileges, common requirements and regulations as other students in the Medical Department; they should receive instruction from the Medical Department “in all branches not provided for by” the homeopathic chairs. In addition, upon a student’s completion of all academic requirements, “every professor in the Medical Department of the University, and also in the Homeopathic Medical College” would furnish the student with a certificate. At that meeting, four homeopathic physicians participated following an open invitation by the Board. The Regents’ plan for the organization of the Homeopathic Medical College was approved by two of these physicians, but not by the other two. Nevertheless, the plan was unanimously adopted by the Regents the next day. The Homeopathic College was placed under the committee on the medical department. On May 6, 1875, the Detroit Homeopathy College was suspended upon the decision of its authorities in order to give the Ann Arbor arrangement “the fullest possible chance to succeed” (MacLachlan, 1905, p.178).

1890s: The Establishment of the Constitutional Autonomy of UM

The years after the Homeopathic College’s establishment were anything but

peaceful. The battles were waged by the rival professions through the faculties, but the state legislature stayed outside of the war scene. Then came the year of 1895, when the legislature reversed itself and passed a law that required the University to move its homeopathic medical college to Detroit. The University refused to comply on the grounds that it was not in the best interests of the University and “the legislature had no constitutional right to interfere with or dictate the management of the University” (Cudlip, 1969, p. 44). As before, a case against the University for its non-compliance was brought to the state Supreme Court by a homeopathic physician, Dr. Sterling. Again, as in the 1856 Draker case, the court decided that the attorney general was the proper party to move in such a case and “a private citizen does not possess the right, without permission of the court, to apply for this writ to compel a public board to perform an omitted duty” (p. 46). Judge Grant, who was a University Regent from 1872 to 1879, wrote the court opinion, and the other four judges concurred. According to Stason, this case lifted the doubt that for forty years had shrouded the “precise meaning of the general-supervision clause and the scope of the independence of the Board of Regents” (Shaw, 1941, p. 123).

Before presenting the court opinions about the 1895 case, an earlier case in 1893 should be mentioned, for it laid down a precedent regarding the University’s constitutional independence, and an interpretation of the relationship between the University and the State. In the 1893 case, *Weinberg v. the Regents of the University*, subcontractors for the building of the University Hospital sued the University for violation of a statute that required all state agencies, contracting on behalf of the state

on public buildings at the expense of the state, to obtain bonds from their building contractors to pay their subcontractors.

The case was first tried in a trial court. The Regents demurred to the declaration of the plaintiff, arguing that the statute did not and could not constitutionally apply to the University. Firstly, the statute only applied to buildings built by “the state,” which, they argued, should not include the University, a separate constitutional corporation. Secondly, even if it were intended to apply to the University, it would infringe upon the general supervision of the University constitutionally invested in the Regents. The Regents lost the case at the trial court, and took it to the state Supreme Court, where two judges ruled in favor of the subcontractors, and three, including Grant, ruled for the University.

The issues examined by the dissenting judges concerned whether the statute was applicable to the University, and whether the negligence of particular state officers made the subcontractors eligible for damages from the state agency. The latter issue is of less relevance to the concern of this dissertation and will thus be omitted from the following discussion. What is significant is that the majority judges in this case argued that the statute could not be constitutionally applied to the University.

The minority judge Montgomery declared that the Regents were officers publicly elected and entrusted with duties related to the control of public property. In this sense, they were agents contracting on behalf of the State. Although the fund to build the University Hospital consisted of appropriations from both the State and the city of Ann Arbor, because the contribution of the city became state property upon its

appropriation, the total funding constituted a State expense, and the hospital was no doubt a State property. Therefore, the statute should apply to the University.

In the opposition, Judge Grant argued that the State corporations listed in the statute did not include the Regents of the University of Michigan. To contrast the two categories of corporations, Judge Grant stated that the former type of corporations were the creation of the Legislature, and thus under the exclusive control and management of the State; on the other hand, “the people, who are the corporators of this institution of learning, have, by their Constitution, conferred the entire control and management of its affairs and property upon the corporation designated as ‘the Regents of the University of Michigan,’ and have thereby excluded all departments of the State government from any interference therewith” (Cudlip, 1969, p. 62). For this reason, he claimed that “the Regents made no contracts on behalf of the State, but solely on behalf of and for the benefit of the University” (p. 61).

Another significant precedent set in the case by Grant concerned the property of the University. He pointed out that the State could not add or take away from the University property without the consent of the Regents. When the State appropriated money to the University, “it passes to the Regents and becomes the property of the University to be expended under the exclusive direction of the Regents, and passes beyond the control of the State through its legislative department” (p. 62). The same held true with private donations, which became part of the University property beyond the control of the State. On the other hand, Grant acknowledged that the State may attach conditions to its appropriations for the University and the Regents must comply

with the conditions to receive the aid.

In the view of Grant, the 1895 case could be sufficiently decided based on the sole right over the University property in the hand of the Regents. Since the State could not take away from the University property without the consent of the Regents, the 1895 act that provided for the removal of the Homeopathic College to Detroit was no less than an exercise of control over the university expenditures. However, the counsel of the relator contended that that case did not apply. Grant then moved on to develop the statement that it was the intention of the Constitution that “the legislature has no control over the University or the board of regents” (Cudlip, 1969, p. 50). He maintained that the board of regents and the legislature derived their power from the same supreme authority, the Constitution, which defined the powers, duties and limitations of each. The language of the Constitution constructed the two entities as separate and distinct constitutional bodies. Compared with every other corporation, “the board of regents is the only corporation provided for in the Constitution whose powers are defined therein” (p. 51). The powers and duties of other public entities and officers shall all be prescribed by law. This discrimination in the language of the Constitution conveyed the intention to place the University “in the direct and exclusive control of the people themselves, through a constitutional body elected by them” (p. 52). Upon these opinions, the court reached a consensus for the first time on the homeopathy issue and all judges concurred.

At the start of the 20th century, the fate of the homeopathy college was continuously shaped by the development of medicine and the medical profession. It

eventually merged with the medical department in 1922 due to the decline of homeopathy with the advent of bacteriology. The merger went through largely because the courses of the two academic units contained considerable duplications.

Analysis and Conclusion

The University of Michigan was designed as a public infrastructure. Its early history was part of the state-building process in the State of Michigan, in which the University was meant to be the crown of a public instruction system. The University's early designers were judges and governors. Until the late 19th century, its regents were people of social standing who acted simultaneously in governmental, professional, and business arenas, or exhibited great easiness in functioning in these arenas in turn. Many of them were lawyers, civic officers, house representatives and senators. Quite a few participated in the legislatures which produced legislative changes with significant impact on the University. In this young republic, the state authority and the public sphere of the political realm had a rather seamless connection.

The University was granted its constitutional status in 1850, which meant, like other government bodies, that it was authorized by the State's fundamental law – the constitution, to be directly responsible to the people of the State, in whom the sovereignty resided. As a result, the governing power over the University affairs was transferred from the government as stipulated by state statute to the Regents through whom the sovereignty was exercised on the people's behalf. The solution of entrusting the governance in the Regents was chosen based on a consideration of who should best

manage the University and a distrust of the political body – the legislature. The consequently revised 1850 Michigan constitution reflected an ethos consistent with the principle of American constitutionalism, which holds that the authority of the government derives from the people and is limited by a fundamental law (Alexander, 1998; Griffin, 1996). In the case of the University, it was legally elevated to the status of a public infrastructure equal to the government. While the directive power of the legislature over University affairs was suspended, the only way guaranteed by law for “the people” to influence University governance was through the publicly-elected Regents. On the one hand, the Regents should maintain the access of the public opinion to the University affairs. On the other hand, they assumed the fiduciary duties toward the University, and were entrusted the power of university governance and the authority to make judgments regarding the best interests of the University.

The homeopathy case, which unfolded in the second half of the 19th century, provides a good illustration of the protracted and complex process through which the role of the University and its relationship to the state and to the broader society in general was negotiated and further clarified. What is often overlooked within previous University histories is the role of the medical profession in the homeopathy case. Brint (1994) defines profession as a form of organization to “create exclusive shelters in the labor market through the monopolization of advanced degrees and other credentials related to higher education that are required for the attainment of the social and economic opportunities of authorized practice” (p. 23). He writes:

...professions are based on the link between tasks for which a demonstrable market demand exists, training provided by the higher

educational system for the performance of those tasks, and a privileged access of trained workers to the market for the demanded tasks (p. 24).

In the United States of the middle and late 19th century, although licensure of the medical profession was recognized by the government as “a means of protecting the public health, safety, and welfare” (Brint, 1994, p. 34), licensing was delegated to the professional associations, and “regulation was eagerly welcomed and actively pursued, not by the public, but by leaders” of the professions themselves. The United States “rejected national-level regulation and adopted state licensing boards, most of which were dominated by members of the regulated profession” (p. 34). It was a common practice for the medical profession in the 19th century to petition the legislature to incorporate medical societies and medical schools, or pass licensing law. The legislature passed laws with regards to the medical practice and profession as its responsibility to govern the public affairs by serving a prominent (and often powerful) sub-sector in the private sphere of economic production.

At about the same historical time, the universities “became the central arbiters of professional status” (Brint, 1994, p. 34). Brint points out that this role of the universities was greatly advanced by the presidents and faculty of leading universities, “who saw the possibility of raising the status of their institutions at the same time that they contributed to the economic and cultural development of their society” through “serving an increasing number of client groups, as taking a more direct role in public life, and moving, in particular, toward a closer connection with people of middle-class aspiration” (Brint, 1994, p. 34). In the case of UM during much of the 19th century, it was a common practice for professions to petition the University to establish a program

or school and provide university instruction on various forms of professional knowledge and skills. Examples included the establishment of the dental school, the mining school, and even the provision of summer embalming courses for the funeral profession.

However, in the homeopathy case, which led to a series of litigations, the regular field of medicine as represented by the medical department at the University prevailed. The University of Michigan rejected the incorporation of homeopathy into university instruction. The homeopaths and their supporters came together to petition the legislatures, which conveyed the petition as public opinion by subsequently passing statutes to stipulate the inclusion of homeopathy instruction in the University's medical department.

To produce a response, the University Regents debated different rationales amongst themselves: compliance to state law through which the sovereignty of the people was exercised, the reasonableness of accepting homeopathy education as university instruction through which the University served the welfare of the people, and the formal justice of its constitutional autonomy. The lack of compliance to the homeopathy legislation on the part of the Regents was never due solely to an insistence on the University's constitutional right, but rather was significantly shaped by the active and energetic resistance of the medical faculty, as well as the monopoly of the medical market by the regular medical profession.

In 1867, the state legislature passed law to grant the University of Michigan an annual appropriation on the condition of installing a homeopathy professorship within the medical department. The University rejected the rider with the understanding that

the appropriation would then be withheld. In 1875, the legislature stipulated the installation of homeopathy professorship but provided corresponding appropriation. The University complied and created a separate homeopathy college on campus. Special appropriation for what the state wanted particularly and addition by the University to its functions had been among conditions for the University to address irreconcilable beliefs by including them all under minimized competition for resources.

In 1895, in rejecting the legislative stipulation of moving the homeopathy college from Ann Arbor to Detroit, the Regents claimed that that decision was not in the best interests of the University, and that the legislative act impaired the Regents' fulfillment of their duty to "promote both the interests of the University and the interests of the people of the State, which are involved in the welfare of the University" (Cudlip, 1969, p. 46). Echoing the reasoning of the 1840 constitutional convention that produced the 1850 constitution, the "best judgment in the interests of the University" as an internal management issue once again raised questions about the location of the governing authority. Although Judge Grant had the option to solve the case in favor of the University through the 1819 Dartmouth College precedent that established the corporate sovereignty over its own property, he decided to establish an explication of the constitutional authority and autonomy of the Regents over the University affairs.

At the end of the decades-long homeopathy litigation, the governance of the University's affairs was firmly established as constitutionally residing with the Regents. What this addressed was fundamentally a management issue. The shield that the University had was even more comprehensive than the corporate shield the Dartmouth

College case had created based on the logic of contract and individual property right.

The interest of the University was identified with the interest of the people of the State.

However, in the actual political process, the University as a state institution located in the public sphere of the political realm not only resisted the legislative order, but also the public opinion delivered by the homeopathy practitioners and supporters as private people whose economic activities and interests were disadvantaged. If we put aside the issue of which sections of the medical profession – homeopathic or regular medical practitioners – were qualified to represent the public interest, the procedures taken by the homeopathic practitioners followed those of a formal democracy. For this reason, we may argue that the University sacrificed the valid interest of “the people” by giving up to the monopoly power of the regular medical profession. In 19th-century medicine, what was sectarian and what was scientific was, literally, subject to debate. Without reputable criteria to decide what knowledge was qualified for university instruction, the constitutional autonomy of the University hid its incorporation by the professions into their economic activities. The University entered the market economy, but not a marketplace, because it was not an autonomous agent involved in social exchange, but was rather regulated by the professions.

CHAPTER IV

MANAGEMENT AT THE UNIVERSITY OF MICHIGAN: REALLOCATION OF ADMINISTRATIVE AUTHORITY 1857 TO 1930

While university governance in the hands of Regents with predominantly business backgrounds is often blamed as the cause of business influence on university affairs, this chapter and the following chapter intend to offer another explanation.

University Management and Administration in the Early 20th Century

In his seminal work *The Emergence of the American University*, Laurence Veysey states, “By 1900 it could be said that administration had developed something like its full measure of force in American higher education” (1965, p. 306). Veysey’s evidence for this assertion is two-fold. One is the appearance in the late 1860s and early 1870s of worldly, sophisticated academic executives, such as Harvard’s Charles W. Eliot (1869-1909) and Michigan’s James B. Angell (1871-1910); another is the appearance of academic managership in the 1890s typified in the commanding personalities of leaders such as Chicago’s William R. Harper (1891-1906) or Columbia’s Nicholas Murray Butler (1902-1945). Under these leaders, university administration was decisively transformed in terms of the tasks performed, the hierarchical structure assumed, and the

power of managerial control (Veysey, 1965). However, the case of the University of Michigan urges us to think twice about Veysey's assessment of the university administration as "full measure of force." In 1915, "the University [of Michigan] established the first university-wide accounting, purchasing, and business procedures as responsibilities of the Office of the Secretary" (Brinkman, 1981, p. 1). This management system for university business differed drastically from previous practice in that it emphasized centralization, standardization, and management techniques. Its installation at a time more than a decade later than what Veysey observes raises the question about whether the introduction of this management structure on campus in the early twentieth century was merely a change of scale or a change of significance to the formation of the modern university administration. This question is not satisfactorily addressed in the extant literature on the history of American higher education, perhaps because the general history often sets the spotlight on presidents, but rarely on a very interesting group of people: the business officers on campus.

Veysey defines the term "administration" as a group of university positions: "the president, deans, business staff, and often to a number of senior professors who regularly supported the president's wishes" (1965, p. 305). He maintains that the term also implies a certain mind-set of these people "who characteristically thought in terms of institutional management or of organizational planning" (p. 305). In this sense, he argues that "although American colleges had had presidents ever since the seventeenth century, administration represented a genuinely new force after the Civil War" (p. 305). Although Veysey's definition of and observation about university administration is

exhaustive and insightful, in his detailed discussion of administration, he does not really give any attention to “business staff.” Thus, he overlooked how the administrative and business functions actually developed within universities. This would have required examination of historical documents on the formation of business functions in universities, a topic not previously considered in most histories.

In the University of Michigan, the “business staff” played an active role in constructing the University’s business administration system from almost non-existence of these functions to an expansive centralized bureaucracy. This process took two decades to culminate in 1930 when the title of Vice-President and Secretary in Charge of Business and Finance of the University was created and bestowed on the top business officer, Shirley Smith. Meanwhile, what happened in the University of Michigan reflects a collective effort by the business officers in the Midwestern colleges and universities to establish their work as a professional field. In this sense, the lack of research on the university business officers indicates a gap in our knowledge about the rise of administration on a university campus.

A careful examination of the activities of the university business officers in the early twentieth century can also shed light on the discussion of the management revolution in higher education. Higher education historians and organizational scholars often explain the rise of university administration by linking it to university expansion in enrollment, budget or curriculum. However, size itself cannot completely explain the selection of specific administrative structures or methods. The actual historical path still deserves our attention.

Transfer of the Executive Power from Regents to Presidents 1857 to 1930

In the case of the University of Michigan, expansion did not result in the automatic restructuring of administration, at least not until decades had passed. From 1880 to 1910, the increase of faculty, students and total income of the University by decade never fell below 50% (See Table 1 on the next page). To give an example, in 1900, there were 166 faculty members, 3441 students and an income of \$555,623; by 1910, those numbers had risen with a staggering speed to 318 faculty members, 5383 students and more than one and a half million dollars. That year, the University had become the third largest in the United States in terms of student enrollment.

Table 2: The Growth of the University of Michigan 1850-1930

Year	Faculty		Students		Total income		Michigan Population		MI Property		Mill Tax	
1850	7		72		\$16,286.22		397654		\$29,384,270.00			
1860	28	300%	526	631%	\$39,735.77	144%	749113	88%	\$137,663,009.00	368%		
1870	32	14%	1112	111%	\$84,966.08	114%	1184059	58%	\$307,965,842.00	124%	\$11,250.00	
1880	53	66%	1427	28%	\$163,034.40	92%	1636937	38%	\$630,000,000.00	105%	\$31,500.00	180%
1890	86	62%	2153	51%	\$360,308.16	121%	2093890	28%	\$945,450,000.00	50%	\$47,272.50	50%
1900	166	93%	3441	60%	\$555,623.90	54%	2420982	16%	\$1,105,100,000.00	17%	\$239,438.32	407%
1910	318	92%	5383	56%	\$1,573,540.14	183%	2810173	16%	\$1,734,100,000.00	57%	\$585,258.75	144%
1920	494	55%	9401	75%	\$3,802,164.27	142%	3668412	31%	\$4,500,000,000.00	160%	\$1,818,750.00	211%
1930	867	76%	12470	33%	\$9,743,184.68	156%						

Interestingly, it was not until 1921, when Marion Burton assumed presidency, that the administrative structure and methods truly began to depart from the administration of the first president, Henry P. Tappan (1852-1863). For almost 70 years, including four decades of dramatic expansion to a remarkable size, the University relied on an administrative structure with eight Regents (ten in early years) making decisions with the President and aided by a secretary and a treasurer, upon consultation of deans who represented consensus of their faculty.

The structure of the Board of Regents⁴⁹ was stipulated by the 1850 State Constitution: a publicly-elected eight-member Board of Regents, to which the president was the ex officio with no voting power. The term of a regent was six years, and eight years after 1863. There were then also a Secretary to the University or Regents, and a treasurer. In 1860, with an entirely new board, the regents organized themselves into committees according to management functions and academic divisions: executive committee, finance committee, committee of building and ground, committee of libraries, and one committee for each academic division. The president sat on the executive committee. This particular committee structure that connected regents with academic divisions was purposefully adopted to weaken the executive power of President Tappan. He had to protest so as to get on the executive committee (Tappan, 1864). After Tappan was fired in 1863, and the leave

⁴⁹ Between 1837 and 1852, the ex officio members of the Regents were assumed by Governors, Lieutenant-Governors, Chancellors, and Justices, and the Regents were appointed by Governor and Senate. Since 1852, Regents were publicly elected, one chosen from each Judicial Circuit, and were appointed by Governor to fill vacancies.

of the whole Board, the new Board was elected with staggered terms of two years to avoid the complete replacement of a Board and to maintain continuity and stability. The academic division-based committee structure remained in place until 1921, when the new president, Burton, took the executive power back into his hand.

The regents on the committee for a particular college or school would communicate directly with faculty and, particularly, the dean of that academic unit, and then brought back to the Board meeting any issues, requests or recommendations regarding personnel, degree granting, funding needs, etc. Deans and faculty members could also communicate with the Board by submitting their concerns or requests before Regents' monthly meeting to be discussed by the Regents and the President.

Most times, decisions at the Regents' meetings took the form of approvals or rejections. When further investigation was needed, an ad hoc committee would be established composed of Regent members, president, secretary, or treasurer, and sometimes faculty members or the librarian, depending on the subject to be investigated. Besides the academic administrative issues, the monthly meetings of the Board were occupied with the management of lands, donations, buildings and plants, and investment; fund allocation in the University and reimbursement for all sorts of spending of the University people; negotiation with the state legislatures for state appropriation; handling the relationship with and requests from the City of Ann

Arbor, Detroit or other places outside of the University.

On the side of faculty, by 1875,⁵⁰ a dean of the faculty of every school or college had been appointed (Shaw, 1941, p.245). The deans were powerful figures, and often served for a long time at the University. In reports of request they submitted to the Board, it was often marked that the opinions were based on consultation with the faculty or reflected resolution of the faculty meeting of the academic unit. Each academic unit had its own administrative component, usually composed of a secretary and clerks, with the secretaryship assumed by a faculty member.

The faculty senate had a long history since 1863, but was rather limited to social function (Hinsdale, 1906). The Regents first officially recognized the University Senate in March 1895. Faculty role in university administration was strong in the 19th century, for there were few professional administrators, and faculty members often had part-time positions in administrative duties, such as registration and assisting the Regents in producing budget statements. Faculty members, especially senior ones, also had rather direct access to the president. In the 20th century, the faculty senate evolved into a more distinct organizational body due to the growth of professional administrators and the appearance of a more distinct division between faculty and administrators (Steneck, 1991).

Of the seven decades from 1852 to 1921, 48 years were covered by the

⁵⁰ The deans used to be elected by faculty, and often did not assume real leadership among faculty.

administrations of Angell (1871-1909) and Hutchins (1909-1919). Both presidents worked well with the Regents and the deans, and were widely popular. Angell, in particular, not only enjoyed high standing with those associated with the University people, but had a positive national and international reputation due to his diplomatic missions to China, Canada and Turkey.

If organization is a method to accomplish what individuals cannot do, President James B. Angell in his 38 years' administration from 1871 to 1909 was a person that deferred the necessary installation of such a mechanism. For years he had no secretary and answered all letters himself in longhand. He personally registered all the students in the Literary Department, granted or refused excuses for absence, examined all cases for discipline (Shaw, 1941), and knew all his faculty. He was still a teaching president in the fields of international law and the history of treaties. He conducted all chapel services and always gave the baccalaureate address to the graduating seniors (Peckham, Stenceck & Stenceck, 1994). It was not just that Angell was energetic or supremely capable, but that he especially valued the personal acquaintance with students and faculty members (Smith, 1954).

Hutchins was the Dean of the Law School at the University for years before he became acting president in 1908, and then voted by the Board to be President in 1909. Hutchins made a unique contribution to the University with his efforts to organize alumni associations. He also took action to regularly inform the state and the Michigan people of the value and contributions of the University. He carried on the mission established by Angell to strengthen the status of the University as a

public university funded by state appropriations. Hutchins was a capable and beloved president, but he chose largely to follow the steps of Angell, consulted him on many issues, and would ask himself what Angell would do in difficult situations. He assumed the presidency in 1909, proposed to resign in 1916 for reasons of old age, only to be deferred by the participation of the United States in the WWI, and finally resigned and left the office in 1919.

Thus, the University's resilient structure of simple administration was practiced for more than a half century, surviving dramatic expansions of the campus, enrollment, budget and academic disciplines and postponing significant administrative changes. The administration increased in number from 12 in 1909 to 22 in 1920. However, the dawn light of the "rise" of administration to power did not come until 1920, when President of the University of Minnesota, Marion Burton (1920-1925) was hired to head the University of Michigan. Burton reorganized the Regent committees by general functions but not academic division, and delegated more responsibilities to the deans, who then reported to the president. In this way, he took the executive power from the Regents and reinstalled it in the Presidency. After Burton's unfortunately short administration due to his untimely early death, and the stormy period of Clement Little's rein (1925-1929), Alexander Ruthven was elected president by the Regents in 1929. After working in the University for 20 years, Ruthven's first task in the President's Office was to install the vice president

system as borrowed from private corporations,⁵¹ a reform which resulted in the real rise of the administration as a stratum composed of professionals who did not do academic work at the University.

Early Period of Business Management at the University of Michigan

Before any substantial structural changes took place with executive power in 1921, there were more minor changes with the methods of getting things done, especially in business affairs. At the beginning, business management was handled by Regents with the compliance of the Treasurer and the Steward. The earliest standing committees of the Board in 1850s were the Finance Committee and the Executive Committee. The level of micromanagement by the Regents may be best perceived in the smallest amount of expense approved by the Board: cut flowers for scientific purposes in the botanical laboratory at the total expense of 75 cents in May 1910.

Naturally, any early changes with university business management had to be initiated by the Regents. In 1894, Regent Cocker,⁵² chair of the Board's Finance Committee, took a trip to the east coast and studied the business practices of

⁵¹ The rationale for this borrowing will be included in the narrative later.

⁵² Cocker received a Bachelor of Arts from the University of Michigan. After his graduation in 1869 until 1885, he worked for the public schools of Adrian, Michigan, in the capacity of Principal of the city High School, Superintendent of the school system, and a member of the School Board. After that, he seemed to have an abrupt shift of career and became president of the Commercial Savings Bank of Adrian and continued in the banking business until his death in 1901. He was elected Regent of the University in 1889, and served two terms, the second one ended by his sudden death.

Harvard, Columbia, Cornell, and Yale. Upon his return, he suggested making an annual budget at a stated time. As a result, the first annual budget report was made in June of that year. In addition, Regent Cocker also suggested methods to ascertain the actual needs of different departments, and to manage purchasing supplies and apparatus. This was the beginning of the University's careful estimation of its annual income and planned disposition for each year.⁵³

The next overhaul of business management took place in 1908 as a consequence of the malpractice of the Secretary of the University, James H. Wade, which was first revealed in a newspaper in spring 1908. In May, Wade submitted his resignation claiming old age after serving in that position for a quarter of century, and denied the newspaper accusations. In October 1908, the Regents appointed an investigation committee. The proceedings of the Regents' meeting in January 1909 recorded what this committee found:

The books and accounts kept by Mr. Wade were very incomplete—so incomplete, in fact, that it is utterly impossible to obtain exact information with reference to many matters which have passed under Mr. Wade's hand. The system, or rather lack of system, seems to have been to look after matters as they came up from day to day, depending largely upon his memory to supply details. Records of transactions through the Secretary's office have not been preserved. (p.418)

This incident prompted the restructuring of university business operation. In the June 1909 Regents' meeting, a Committee on Revision of University Accounting

⁵³ The first annual budget for 1894-1895 was prepared by Cocker and the President. According to President Angell's annual report in 1904, Professor William H. Pettee of mineralogy and economic geology had been making budget reports for 1902 and 1903.

was set up, composed of the chair of the Regents' finance committee, Regent Carey and Professor Henry Adams of political economics. The next month saw Shirley Smith selected to fill the vacancy left by Wade, and he quickly fit into his new role. In November, the Revision Committee delivered a report presenting certain changes suggested by the Secretary for the system of book-keeping in that office (p. 393). The report was adopted and authority given to the new Secretary to install this system. These actions allowed the January investigation report in 1909 to claim:

[I]t should be stated that sometimes since a committee was appointed to prepare suitable books for the Secretary's office, the purpose being to create a modern and up-to-date system of book-keeping in that office. This system is now in operation, and the lax methods employed by former Secretary Wade will be impossible in the future. (p. 418)

These examples of that historical period demonstrate the instrumental role that the Regents played in University business operation, especially the Regents on the Finance Committee. The backgrounds of those Regents seem to well justify their selection of the specific standing committee to sit on. Regent Cocker's career spanned, first, the school system and, later, the banking business. Regent Carey was, chronologically, secretary and treasurer of a salt and lumber company, president of business firms, treasurer of city government, secretary of the Congressional Committee of a judiciary district and Paymaster General of the Michigan troops. Nevertheless, the steps of these pioneering business managers were still rather primordial ones that preceded more systematic actions taken by an understudied UM figure, Shirley Smith.

Smith was born May 3, 1875 in Nashville, Michigan. After graduating from

the University of Michigan in 1897, Smith worked as an instructor in English until 1901, when he was hired as secretary of the Michigan Alumni Association, and editor of the Michigan Alumnus. From 1904 to 1908, he was an assistant in the president's office of the Fidelity Mutual Life Insurance Company. In 1908, the Board of Regents hired him as Secretary of the University of Michigan. His business experience was a major factor in his appointment. According to President Angell's introduction of Smith at the Board meeting in September 1908, his familiarity with "the interior life of the University" and his knowledge as well as experiences gained in "business life" served to prepare him "for the varied duties of the important office to which he is called." Smith worked for the University from 1908 to 1945, first as the Secretary of the University, and later, as the Vice President and Secretary in Charge of Business and Finance. He was the person largely responsible for the installation of a business management system in the University.

Using Angell's administration at UM as one of his cases, Veysey (1965) argues that by 1910 the structure of the American university had assumed its stable twentieth-century form. At the very least, at UM, the dramatic transition in business functions began after that date. In 1910, Smith was designated by the Regents to make a trip to "such other universities and colleges as he might regard most desirable and to make a study of their systems of administration" (Board of Regents proceedings, November 1909). Smith chose to go to the east coast. Upon his return, he wrote to M. E. McCaffrey, Secretary at the University of Wisconsin:

I have just returned from a very interesting trip through the east. We can learn a good many things out there (our alumni and the public

generally could learn a whole lot of them in respect to how to support a university) and on the other hand I think there are a number of things in the business administration in which we could teach them” (Shirley Smith correspondence, February 12, 1910).

This incident illustrates that UM appeared to be on the cutting edge of development of the business management in 1910.

Establishment and Development of Business Office at the University of Michigan

When Smith came to the Secretary position in 1908, he identified an enormous blank in the university management. In his manuscript of the early history of the Association of University and College Business Officers, Smith (1936) reflected on the circumstance that necessitated the establishment of such an association:

There was a golden opportunity in this field [business administration] at almost any college or university in the country during the first decade of the present century. Old methods had been outgrown; new ones had not yet been formulated. The voice of work needing to be done was crying in a wilderness of perplexity and inactivity like cows bawling at the pasture gate for a farmer on an all-night drunk in town” (p. 3).

The incident of casual practice by Secretary Wade mentioned previously was a reflection, rather than an exception of the common practice at that time.

The problematic situation was shared by many officers at other universities so that in 1909 they collectively started an association for university business officers, the first organization of this kind in the United States. Smith’s involvement in this professional association paralleled the evolution of his job responsibility and the emergence of a bureaucratic structure for business management within the University. The development of the association will be introduced in the next

section. Attention here will be given to the long gradual process to differentiate business administration from the University operation.

To understand the development of the Business Office of the University, it is necessary to take a look at the predecessors of Shirley Smith within a structure of separate offices for the secretary and the treasurer. Following the prevailing model of financial governance in state and municipal government in the 19th century, the treasurer's duties were largely confined to processing cash, such as collecting money and making disbursements, whereas the secretary kept the more detailed accounts of receipts and disbursements, each serving as a check on the other.

In *History of the University of Michigan 1837-1906*, Professor Burke Hinsdale (1906) provides biographical sketches⁵⁴ of Secretary Wade (1883-1908) and Treasurer Soule (1883-1907), which are included immediately after those of the Regents, "because of their [Wade's and Soule's] prominence in the life and administration of the University during nearly a quarter of a century." (p. 215) Even under investigation, Secretary Wade was acknowledged by his investigators for his rectitude. In Hinsdale's *History*, published before Wade's loose accounting was revealed, Wade was recognized as contributing to the University's then prosperity with "his wise counsels and his sound business sense" (p.215) The

⁵⁴ Before taking the University Secretary position at the age of 48, Wade held various local offices in his native town, which included Postmaster of the village, a member of the School Board, President of the Village, and the Supervisor of the township. Soule became the University Treasurer at 51. Before that, he worked as an accountant for the Michigan Central Railroad Company, served in the army during the Civil War, and went back to Michigan Central Railroad after the war.

acknowledgement the Secretary and Treasurer had in the formal history of the University implies their important status as the University's business officers.

After Shirley Smith became the Secretary, the Treasurer played a less and less significant role, not only as a result of Smith's effort to centralize business administration, but also reflecting the changes of accounting practice. The transition was a long process, and the following incident can show us the obscure origin of the later empire of the business office. In November 1910, the Regents' meeting minutes recorded that the Treasurer requested to be audited, and Secretary Smith suggested including his office, but interestingly, it was immediately added in the record that "no funds were handled there." This piece of record may tell about the fundamental difference between the two offices in 1910, but things would soon change, and the treasurer's office would become more an appendage to the secretary's office until the former was completely abolished in 1930.

In addition to book keeping, the Secretary had a variety of responsibilities. Authorized by the Regents, the Secretary signed the contract with a coal supplying company, issued certificates with the University seal, advertised for bids on the construction of a building, and communicated with the Auditor General in the State regarding fund transference, to name but a few responsibilities. The Secretary could also inform the Regents of what they did not know. At the Regents' meeting in November 1906, Secretary Wade informed the Board that there was unrest among janitors and teamsters who not receive a raise of salary when men in the engineering shops and firemen and coal passers in the heating plant did. Upon his

recommendation, janitors and teamsters were also given a raise.

It is very difficult to summarize a job description for this position, but most important of all, the Secretary sat in the meetings of the Board of Regents and the President, took notes of the decision-making process, and produced a proceeding for each Board meeting to be approved by the Board at their next meeting. He was by no means an equal participant, but he certainly participated. Distinct from a stenographer, he took part in the give and take discussion of the meetings, providing information, presenting data, offering options to problems, implementing some of the decisions made, and offering solutions to what he defined as problems. On this basis, as the only person besides the President between the top governing body and the whole university, and knowing what were connecting the two ends, he had the information and position to create his domain, depending on his own impetus and capacity. Shirley Smith proved he did not lack either.

Since Shirley Smith became the Secretary in 1908, the tasks of this position markedly increased upon his initiation and due to his manifested competence. One of his major projects that spanned decades was the centralization of business operations in one office.⁵⁵ What he did can be categorized into four types of reform: 1) standardizing business practice, especially through uniform paperwork; 2) consolidating university-wide resources for efficient redistribution; 3) creating

⁵⁵ At that time, nothing could yet be taken for granted with regards to what should be included in business operations and why. The restructuring for business operation was still to be defined and justified.

inventories; and 4) systematizing University business affairs by creating a particular work flow through his office or his subordinates. Smith's specific reform actions are described below.

In November 1908, the Regents' Committee on Revision of University Accounting accepted suggestions made by Smith about the system of book keeping in the Secretary's Office. The changes included a new form of requisition and order blank and a new form of ledger, journal, etc. Starting in April 1909, it was decided that requests to the Board of Regents that involved the expenditure of funds outside of the budget appropriation should first be endorsed by the Dean, and then filed in triplicate with the Secretary on forms furnished by him so that the chairman of the committee on the department, the chairman of the finance committee and the record of the auditing board would each receive one copy.

In February 1910, through Regent Sawyer, Smith brought before the Regents meeting a proposal to develop a purchasing and inventory system. For this purpose, he was authorized to hire an assistant purchasing agent and two clerks. The inventory of the University property is another story. As early as in July 1908, the Regents desired to have an inventory of the property of the University, and the task was assigned to the Treasurer. In December 1910, the Treasurer presented to the Board the biennial inventory of the University at the close of the fiscal year ending June 30, 1910. However, this work was later transferred to the Secretary. In March 1912, the Secretary was authorized by the Board to "provide general direction" for the proper officials and members of the faculties to develop an inventory of the

buildings, apparatus, equipment, and other property of the University. To this end, he was authorized to appoint an inventory clerk two months before. From that point on, it was the Secretary who reported the biennial inventory, which also served to meet a state requirement passed in 1914.

Smith became involved in personnel management in June 1910, when a resolution passed by the Board authorized him to insert in the budget the names of persons proposed by heads of departments and approved by the dean for assistantships. The old practice continued for a while after that, with lists of assistants being submitted by a Regent or a Dean. But a couple of years later, the routine was a long list of assistants which was submitted by Smith in every October. In January 1911, the Board of Regents instructed the Secretary, together with the Executive Committee consisting of the President and three Regents, to check on the office hours of the clerical employees. In November that year, clerical employee working hours were defined with regards to weekly total and office time. Special arrangement had to be approved by the Auditing Board composed of the President, Secretary and Treasurer. In January 1912, the Regents passed a resolution⁵⁶ which authorized the Secretary to maximize the use of all employees whose duties were of

⁵⁶ The specific resolution recorded in the proceedings of the Regents' meeting in January 1912 is as follows: All employees whose duties are of a stenographic or clerical nature are to be regarded as employees of the University as a whole no matter to what department or office assigned; and that if the entire time of such an employee be not required, in the opinion of the Secretary of the University, by duties in the office or department to which he or she is assigned, other duties may be added by the Secretary, either temporarily or permanently, in other offices or departments; and that hereafter employees of these classes will not be engaged nor their compensations fixed or altered except after recommendation by the Secretary of the university; and that authority rests in the Secretary to terminate the service of any such employee whenever in his opinion the good of the university requires such action. (pp.360-1).

a stenographic or clerical nature, regardless of their specific department or office.

Their compensation, hiring and firing rested with the Secretary. In the same month, Smith standardized the typewriting machines in the University.

The most significant financial management reform took place in July 1915.

The Secretary was authorized to combine into a single account for each department or division of the University, appropriations made for current expenses and new equipment. It was also determined that, thereafter, all classifications between equipment and current expenses would be made in the Secretary's Office. This was, in fact, a negative response to a suggestion made by an outsider four years ago with regard to the distribution of power for discretion between the Secretary's Office and the departments. In June 1911, a certified public accountant hired by the Regents submitted his report after auditing the books of the treasurer's office, those of hospitals, and the general office system. Among the suggestions he made, one was particularly related to the Secretary's purchasing system. He suggested the classification on orders to be made by the person giving the same, rather than by the Secretary's office, in order to hold the person who placed the order accountable and avoid counter entries. Contrary to this suggestion, the 1915 resolution bestowed the power of classification on the Secretary and strengthened the trend toward a centralized business administration.

This process of centralization means much university business was streamlined and conducted in the business office. It also empowered the Secretary to participate in business decision-making at the functional units of the University.

When the new chemistry laboratory was built in 1910, the bids for furniture were considered too high by Regent Carey, who was chair of the Finance Committee. Recorded in the Regents' proceedings, the director of the laboratory was asked to report on "what the old lab had and can be used in the new, and what cannot be reused so as to decide what are absolutely necessary to purchase new." In the next month, the Secretary was authorized to "determine, with the representatives of the Department of Chemistry," how these questions should be answered.

Another example of the Secretary's involvement in financial decision-making at the department/center level was an interaction with the Medical Director on the issue of hiring additional nurses in 1912. The Secretary maintained that the way to secure additional nurses should be through increasing the number of nurses in the Training School, rather than by hiring graduate nurses, because "the annual compensation to the pupil nurses is \$50 or \$75, whereas the weekly compensation of the graduate nurses is \$20 or \$25."⁵⁷

The Secretary did not only suggest reducing cost. He understood the use of spending. In May 1916, the Secretary reported to the overly thrifty Board⁵⁸ that it was not feasible for the Association of Collegiate Alumnae to furnish the

⁵⁷ In these two cases of the Secretary's involvement in the financial decision-making of operational units, it would be difficult not to think of his inputs as troubling. In the case of the Chemistry lab, the questions asked would have been competently addressed by people who ran the lab, unless there was some doubt about their accountability. In the case of hiring additional nurses, training school nurses and graduate nurses had differences of quality, time to secure, or collateral investment beyond the cost involved in payment.

⁵⁸ In his biography for Hutchins, Smith recorded how the Board saved \$1000 through their contracts of hiring Hutchins as acting president, and granting Angell permission to take his diplomatic mission in foreign countries.

commencement luncheons at less than 75 cents per plate. To enable spending necessary to the function and mission of the University, Smith was instrumental in the Board and the President's efforts to expand the University revenue. He was a staunch advocate of bigger state appropriation for the University. Since 1913, Smith worked together with his Presidents to regularly prepare pamphlets that informed the state constituencies and the state legislators about the contribution of the University and its needs.

As described above, many things took place in the 1910s which started a new epoch for the University business administration, to say the least. In *The University of Michigan: An Encyclopedic Survey*, Volume Two (1942), John C. Christensen, Smith's right-hand man for 27 years, wrote the section on the University business office. He summarized as follows the significance of the business management reforms that took place in the 1910s before Burton's presidency:

Since that time, by centralizing in the Secretary's Office accounting control of all University Departments, the University business administration gradually has been extended to include the entire institution. The purchasing procedure was reorganized, and eventually all purchase orders, including orders for books, went out over the signature of the purchasing agent. The accounting system also was reorganized, and an effective method of budget control was institute in the Secretary's Office. (p. 272)

A title that more accurately reflected Smith's responsibilities did not come until 1927, during Clements C. Little's administration, which followed that of Burton. Smith's title was changed to Secretary and Business Manager. In 1929, during President Alexander G. Ruthven's reform, Smith was designated as one of the three vice-presidents, a then newly-added layer of administration at the University, while

also maintaining the title of Secretary. In 1931, Robert A. Campbell resigned as Treasurer after a quarter century service at the University, and the Treasurer's Office was abolished. The Secretary's Office was reorganized into four major divisions: accounting, purchasing, cashier and investment, and Smith's title was changed to Vice-President and Secretary in Charge of Business and Finance.

We may refer to Christensen's summary again to take a look at the end product of the centralization of business management in 1940:

All financial management is centralized under the vice-president and secretary in charge of business and finance, who is responsible to the president and the Board of Regents. This includes direction of the central Business Office, the Department of Buildings and grounds, and various other departments or divisions dealing with business or service functions, such as the Printing Department, the Binding Department, and the various storehouses. (pp. 272-273)

This grand complexity was completely a twentieth-century addition to the organization of the University. University business management, with its main devices of classifications, forms and procedures, standardized the university business practice at all levels; and its operation laid down rules that required compliance of the academic side of the University. Although Shirley Smith and his subordinates, such as Christensen, installed this structure at the University of Michigan, they did not create it, or at least they were not the only inventors. In the next chapter, we examine the incubator of the practice of the twentieth century business administration for universities.

CHAPTER V

BUILDING AN ADMINISTRATIVE MACHINE

Establishment of the Association of Business Officers of the State Universities and Colleges of the Middle West

Business officers of six Midwestern colleges and universities met in Chicago in 1909. Shirley Smith of the University of Michigan was among them.⁵⁹ The meeting minutes in January 1910 recorded that a consensus was reached to form “an association of the officers in charge of the business administration of the state colleges and universities in the Middle West,⁶⁰ for the purpose of meeting in annual conference, to discuss the various problems of administration, such as unification of accounting, uniformity of annual reports, purchasing system, inventory system, etc”.

⁵⁹ Although Shirley Smith was a driving force behind the establishment of this association and headed it as president from 1911 to 1914, there were also other key characters who contributed significantly, such as Carl E. Steeb at Ohio State University (Association President, 1914-16), George H. Hayes at University of Minnesota (1916-18), Maurice E. McCaffrey (1918-19) at University of Wisconsin, and John C. Christensen (1922-23) at Kansas Agricultural College and later University of Michigan.

⁶⁰ The nature of the member institutions and the selection of territories seemed to be reinforced by a subsequent following event. According to Shirley Smith’s paper written in 1936 on the early history of the Association, there was a meeting in 1910 to initiate a national association of registrars, secretaries and accountants of all the state institutions. During the meeting, the very second day witnessed the withdrawing of the secretaries and accountants to meet separately in another room for they considered their work as differing greatly from that of the registrars. As a lesson taken from this meeting, Smith and other founding members of the business officers’ association believed that an effective organization should not comprise “so many institutions with such varied problems.” They decided that the organization they planned should rather be one of “state universities within a comparatively small territory.”

In October 1910, the Midwestern Association of College and University Business Officers was established in Chicago. Unfortunately, the minutes of this meeting was never written due to a rare negligence of the secretary appointed for that meeting, Carl Steeb, Secretary of the Ohio State University. However, the 15 points program was partly preserved in the paper written by Shirley Smith on the Association's origin and early history. Following that meeting, meeting proceedings were produced to distribute by mail after each gathering.

Thus, the first officially recorded meeting of the established Association was actually the second meeting that took place on January 12 and 13, 1912 in Chicago, with Smith as the Association President. Of the fourteen participants, eleven were from nine public universities⁶¹ and six states. The number of participating organizations and the number of the states represented increased every year.⁶² The type of the organizations was restricted to public colleges and universities, especially the land-grant institutes, but the states included extended beyond the middle west. According to a member count in 1918, the Association included two western states Utah and Oregon. The other twelve states represented were North Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Indiana, Michigan, Kentucky and Ohio. In 1919, Texas appeared on the picture. The next year, "Midwest" was dropped out of the name of the association. Among new members

⁶¹ These universities were University of Indiana, University of Kansas, Kansas State Agriculture College, Michigan Agriculture College, University of Michigan, University of Minnesota, University of Wisconsin, Ohio State University, and College of Medicine and Surgery, University of Minnesota.

⁶² The membership was individually-based, which means it was not an institutional membership.

approved that year were business officers from Princeton University and University of Washington at Seattle.

Steadily expanding year after year in terms of states and organizations represented and overall membership, the Association used its annual meeting as the major venue to conduct its business. At each annual meeting, the proceeding of the previous meeting was approved, president and secretary for the next year were elected, and the location of the next meeting was selected. Each time, a different university hosted the meeting. Visiting facilities on that campus was a part of the agenda and often took place at the end of the meeting.⁶³ Meeting participants inspected department buildings, shops, stores, university hospital or any other facilities that they viewed as relevant to business management.

As mentioned before, Shirley Smith was one of the founding members. He and Christensen were President and Secretary for the years of 1912-1913 and re-elected for 1913-1914. Even when not serving these roles, they were active members in this Association. Christensen was also elected president for 1922-1923. Through their leadership, the business practice at the University of Michigan was closely tied to the agenda of the Association's annual meetings. At the end of his history paper, Shirley Smith (1936) wrote, "[I]n my mind one of the most influential features of any small success that I have had in my life work has been my

⁶³ When the meeting was held at the University of Michigan in 1915, several participants requested to visit the Ford Automobile Company in Detroit, but the trip was not actualized due to reasons on the side of the Ford.

membership in this organization.”

The first decade of the Association laid down beliefs, principles and projects that were fundamental to its function, structure and influence on the universities involved. A thematic analysis of the meeting proceedings⁶⁴ produced in that period reveals the gist of this process of construction. The proceedings have a rather consistent format and structure. Each proceeding had a list of participants, showing their names, affiliated institutions and titles. The list was followed by the minutes that briefly recorded meeting program and activities, including membership approval, title of papers presented, identity of the luncheon speaker, topics of roundtable discussion, and the end of conference activities. Finally, several but not all papers presented at the gathering were included.

The proceeding of 1912 is the earliest formal document preserved of the Association. From 1912 to 1920, there were 9 annual meetings held, plus a special meeting on 1919 to discuss settlement with the government about the Student Army Training Corps (S.A.T.C.) accounts. In total, there were roughly 90 agenda items counted from the proceedings. Many of them were be papers presented at the meeting, but only 18 papers are preserved in today’s archive. Of these 90 topic items, 19 were about accounting, with 7 on uniform accounting and 6 on cost accounting; 9 focused on purchasing; 8 discussed the organizing of university business management in general; 7 were related to personnel with regards to

⁶⁴ All proceedings are available on microfilm.

vacation, salary, insurance, and annuity; and 7 concerned themselves with financial report and budgeting procedures. The remaining topics covered a broad range of various transaction units on campus, such as hospitals, stores, shops, mailrooms, cafeterias, student organizations, printing house, etc.

The attention these topics received varied over the decade, which in a way suggests the paces of the issues' development. Discussion of business management, in general, concentrated in the first five years and focused on building this profession and its importance, claiming a domain of expertise, and laying down principles of practice. After two years' disappearance, this topic popped up again in 1919 and 1920 to review the new reality. Uniform accounting was the top concern at the beginning. The phenomenon of its not being raised after 1917 implied its successful implementation in the universities. In contrast, cost-accounting stretched over the whole span of this decade and showed a lack of consensus within the Association. In spite of these variations, it is not surprising that such a gathering was organized for participants to compare notes on what they were doing in their own universities, to discuss shared issues, and to give and take inspirations on best ways and methods of practice. In the following sections, we take a detailed scrutiny of the Association proceedings on three significant themes: conceptualizing university business management, conceptualizing its implementation on campus, and development of university accounting.

Defining and Conceptualizing University Business Management

Reading the Association proceedings, one immediately realizes the existence of influence from outside of the campus. In the proceedings of the 1912 meeting, one of the four agenda items was a discussion among the participants based on “Efficiency in University Management,” a study for the Carnegie Foundation for the Advancement of Teaching (CFAT), by Morris L. Cooke (1910). The discussion was led by Clyde Furst, Secretary of the CFAT.

The influence of CFAT will be seen again in our analysis of the topic of accounting. Its deep and extensive involvement in American university affairs can be attributed to the ambition of Henry Pritchett, the first president of CFAT who held the position for 24 years (1906-1930). Pritchett was an astronomer, a German-trained scientist, who spent more than a decade as an instructor at the University of Washington at St. Louis, and six years as the president of Massachusetts Institute of Technology. His vision for a national system of higher education for “the Great Society” (Lagemann, 1983) and his belief in system and organization rather than individuals drove his engagement in shaping American colleges and universities. The self-organizing of the business officers in our story was an immediate fruit of Pritchett’s impetus. In this section on the conceptualization of university business management, we need to start with a speech by Pritchett in 1905, and a report sponsored by him in 1910, before we examine the business officers’ construction.

Pritchett's Speech of 1905

In June 1905, Henry Pritchett delivered a speech at the University of Michigan, "Shall the University Become a Business Corporation?" He made the argument that the university was not a business corporation, but there was no reason why its business management should not be handled with methods practiced in a business corporation. He also argued that businessmen committed to serving the academia should be the best counsel to faculty. This argument became a popular justification for the transfer of management methods from business corporations to universities.

The speech received immediate publicity and was published in the September issue of *Atlantic Monthly*, and the October Issue of *Science*, and was quoted by Andrew Draper, New York's Commissioner of Education, in his speech entitled "*University Presidency*" at the National Conference of College and University Trustees held on October 17th at the University of Illinois, during the same week that inaugurated Edmund J. James as the president of the university. Draper's speech was, in turn, published in *Atlantic Monthly* in January 1906.

The main topic of Pritchett's address was the administration as a unique feature of the American university. In contrast to the German university which was governed under a republic of scholars, the American university was governed by a board of trustees or regents with the president as its executive officer. Pritchett touched on three aspects of this administration. Firstly, "the board of trustees, even in our older colleges and universities, is chosen almost entirely from business men

and on the basis of business experience. It is no longer considered necessary that the president should be a scholar.” Secondly, the board and the president controlled the entire policy-making of the university. Third, this governing body managed the university through an administrative system, the top-down method of which was duplicated down through the university to schools, departments, and even to the professor-student relationship.

The board of trustees, with the president as its chief executive officer, passes upon the entire policy and administration of the institution. It appoints professors, promotes them, or dismisses them, it engages them to carry out specific pieces of work at specified times, as a business corporation employs its officials; the tenure of office of the professor is at the will of the corporation, as is the tenure of office of a business employee. Under this arrangement the power of the president are enormously increased, and the action of the corporation is in nearly all cases his action. He possesses an autocratic power which would not for a moment be tolerated in a European institution. From him the same administrative system reaches down through the institution. Professors employ their assistants for specific duties at specified times; students are required to undertake specific work in a prescribed way and at a fixed time. (Pritchett, 1905, p. 295)

Pritchett concluded that it was this particular form of administration that made the university resemble a business corporation, not only in terms of the methods of operation, but also, oftentimes, in the spirit of operation.

Reaching from the corporation and the president down to the student just admitted, the administration is one which partakes in its nature and in its operation of the methods and oftentimes of the spirit of the business corporation. It has the compactness and the directness of responsibility which the business organization carries with it. Its machinery is complete in prescribing for each officer and for each student his specific duty, and in bringing to bear upon him the power of the organization if he fails to carry out the implied contract under which he is employed or the implied conditions under which he is admitted. The watchword is no longer freedom, but accountability to

the administration. (p. 295).

These depictions not only suggest an imbalance of power within American university between the governing board and faculty/students, but also an administrative culture that was practiced through an administrative system by every level of the university hierarchy.

In spite of so many defects of the American university, Pritchett's comparison of it versus the German university did not lead to a suggestion to dismantle the former's administration for the pursuit of a scholars' republic. He raised that option only rhetorically:

Would the American university – whether a private or a state institution – be bettered if its administration were turned over to the faculty instead of being vested, as now, in a board of trustees who do not pretend to be experts in educational methods? Would it be a step forward, for example, to entrust to the faculty the election of the president and of the professors, and to put into their hands the settlement of the larger questions of policy and of expenditure? (Pritchett, 1905, p.297)

He answered these questions negatively: "I think it may be said with certainty that a radical change of this sort would work harm, not only at the beginning, but in the outcome. Administration of experts by experts is seldom a success." Instead, Pritchett offered his preferred candidate of administrator in defense of the trustees with a business background: "Perhaps no type of man has been developed who is a wiser councilor than the business man of large sympathy and of real interest in intellectual problems..." He then redefined the task under consideration as follows:

The question is not whether we can change this or that detail of university life, but it is rather this: our present tendency is toward a close organization, toward a limited freedom, toward team play, which carries through to graduation great masses of

men, toward a centralized government. (p.298)

By giving an adjective word to each component of the university administration, Pritchett directed the attention of his audience away from a fundamental doubt of the administration to scenarios that could balance those contradictories. He went on to pose a second set of rhetorical questions:

Would it be wise to counteract these tendencies by influences in the administration which shall make toward individualistic scholarship, larger freedom, less pressure in the organization, opportunity for professors and students to deal with the larger question of university life, cooperation between the faculty and the administrative board in the government? (p.298)

His third set of questions raised later reveals his affirmative attitude toward the yes or no questions above. What is worth of noticing here is that his solution was to improve the administration through the administration itself. The key to implement this solution, according to Pritchett, was people at the head of university administration with “a scholarly spirit and scholarly sympathy.”⁶⁵

Following this train of thought, Pritchett raised a third group of rhetorical questions which suggested nothing other than a collaboration of trustees and faculty in administration:

In the settlement of the larger questions of administration – the choice of president and of professors, the fixing of greater questions of policy – may not some council composed of trustees and faculty jointly share the responsibility to advantage? Whatever may be said in favor of the sound judgment of the well-trained business man, I cannot doubt that

⁶⁵ By “the head of university administration,” Pritchett referred to the governing body that included not only the president but also the trustees, who were referred to constantly before and after this passage.

he would be a wiser councilor for education if he could hear first hand the views of devoted, intelligent scholars. On the other hand, will not the scholar profit equally by such contact, and is there any surer way to widen his horizon and to give him the experience which ripens judgment than to offer him a share in the responsibility of settling their larger questions, while relieving him at the same time of part of the pressure of the daily routine? (p. 298)

What Pritchett described was a collaboration through communication. It was neither a shared governance between faculty and administration, nor a division of responsibility between them for distinct tasks, which was a concept to appear several years later. In Pritchett's own words, what he envisioned was "a better contact between the governing body and the teaching body" (p. 299). He did not suggest to change the composition of the governing body, but to render its administrative policy making process more inclusive.

Toward the end of his speech, Pritchett nailed the cause of the administration problem as overlooking the spiritual side of the administration in favor of its mechanical side. By "spiritual side," he referred to a particular method to managing people psychologically and, he argued, more effectively:

The other side of administration, the spiritual side, consists in getting out of the men the best there is in them. For a set of perfect men any administrative system would suffice. Good administration consists in taking men as they are, with their prejudices, their faults, their virtues, and in getting out of them the highest results of which they are capable. (p. 299)

With the careful reading conducted above, even the sensational title of this published speech may be considered misleading. The speech was not about university, but university administration; it was not about whether university should become a business corporation with respect to various implications this phrase may

suggest, but about the problem that university administration was perceived as resembling the administration of business corporation in specific terms, such as compactness or rigidity. He defended the composition of the university board of trustees by business men. His solution was for the current governing body to act on advice of faculty, and for the administrative system to adopt a different and more humanizing attitude when interacting with people. Through carefully defining the topic into one narrow and specific issue, Pritchett started with a dramatic title and concluded with a mild suggestion of improvement.

At the end of the speech, Pritchett stated what he believed was the purpose of the university and the critical condition for it to thrive:

[T]he first purpose of the university is not to further industrial development or to increase the wealth of a state, but that it is the development of the intellectual and spiritual life. This development can take place only in the air of freedom, however evident are the dangers which freedom brings with it. Wealth, power, the niceties of life, may all grow in an atmosphere of limited or of artificial freedom, but only in the air of real freedom can be grown that spirit and that intelligence which shall minister to those things which are spiritual and to those things which are eternal. (p.299)

Pritchett's speech thus very delicately argued that the American university should be viewed as a social institutional first and above all, for "the development of the intellectual and spiritual life" can reconcile with a corporative administration of the business world, so long as the administration possesses a "sympathy" of this spiritual pursuit and exerts its spiritual side. Through administration, the connection between university organization and business corporation was justified.

One issue Pritchett mentioned but did not elaborate on was faculty

participation in administration. He pointed out that much administrative work in the university was conducted by faculty. Calling this an organizational burden, he suggested that while faculty should be offered a share of responsibility to settle larger questions—“the choice of president and of professors, the fixing of greater questions of policy”, they should be relieved of “the pressure of the daily routine” (p.298) to do what they can do the best. Five years later, this idea developed into a division of labor in university operation between administrators and faculty.

Morris Cooke’s Report of 1910

In 1909, Pritchett turned to Frederick Taylor, the father of scientific management, for assistance in developing his corporate ideal of the university (Barrow, 1990, p. 66). Taylor recommended Morris L. Cooke, a young mechanical engineer, to conduct the study desired by Pritchett. In 1910, Cooke’s study, *Academic and Industrial Efficiency*, was published by CFAT. In the preface he wrote for Cooke’s report, Pritchett stated more clearly his view of the connection between university and business. He singled out the business affairs of universities as an unambivalent domain for the application of models borrowed from business corporations. The human side of university administration was meant to ensure the highest productivity of university men. These rationales became the foundation of Cooke’s report, *Academic and industrial efficiency* (1910). In Cooke’s introduction to the report, he wrote:

In his verbal instructions to the writer, Dr. Pritchett stated that an

educator could not be utilized for the purpose of making this report, because the Foundation wanted especially to see the institutions to be visited through the eyes of a business man, and of one generally familiar with modern practice in management...In studying the various operating mechanisms used by the colleges the writer has had constantly before him for purposes of comparison the equivalent mechanism used in the industrial world" (p. 3).

Thus was justified, in Cooke's report, the unobstructed analogy between university and business.

Cooke made a step forward from Pritchett by applying in his evaluation the principles of "functional management," which were based on "the belief that there is one best way to do any one thing, and that usually this best way can be determined by scientific methods if people will use them" (p. 17). "Under functional management every effort is made to discourage the practice of deciding matters – big or little – on anyone's personal opinion" (ibid), which is what the scientifically discovered method opposes. An immediate goal of this management method is efficient labor division:

Perhaps the chief object in functional management is to safeguard a man in the performance of the highest kind of work he is competent to perform. This is in large measure brought about by relieving him of those duties which can be performed as well, or almost as well, by some one whose time is not so valuable.... Functional management will see to protect him in the performance of these duties and relieve him of the things which can be performed by other agencies." (p. 15)

This statement implies that both the tasks and the capability of the task performers need to be precisely classified so as to be accurately matched. Logically, there is not only one best way to do things, but also a best person to do a particular thing.

Cooke not only considered this clear-cut division as possible and most efficient, but he also denied the efficiency of any shared decision-making:

[F]unctional management says that with A and B launched on an enterprise three arrangements are possible: (1) A can work altogether under B's directions or (2) B can work altogether under A's directions or (3) the work can be divided that A will work under B's directions in some things and B will work under A's directions in the balance. But under modern scientific management they cannot work together in anything and do it efficiently. (p. 16)

When the above theories were applied to university affairs, Cooke's scientific management conception about labor division was phrased in such a way as to prioritize faculty productivity by protecting their working time from interference or distraction of any sorts, and also to ensure the authority of the faculty in a domain where they were experts. However, in exchange, faculty needed to accept his "gauge of efficiency" and productivity, concepts derived out of the industrial world. In this way, Cooke's rationale of functional management was able to define academic work by defining its measurements. Cooke's definition of the university operation as a sum of clearly demarcated parts cannot really help with setting boundaries for a faculty domain, because even if there could be a clear labor division between business managers and faculty, the business managers have a specific evaluation criterion for any work on campus, including the academic work.

Construction of University Business Management by the Business Officers

Through the platform of the Association, the framework of efficient management of universities developed by Cooke found sympathizers and willing listeners among university business officers, and the management device contrived

under its rubric was gradually implemented in the universities by their business officers.⁶⁶ The first recorded meeting of the Association took place on January 12, 1912. The meeting agenda included a discussion on efficient university management based on Cooke's report, the discussion led by CFAT's secretary. Unfortunately, only one of the four agenda items was recorded in the meeting minutes, and that was J. C. Christensen's report of his observation at a trip to other universities. As a practitioner within a university (Kansas State College of Agriculture), his arguments resembled those of Pritchett and Cooke, but was further developed in terms of concrete steps to bring changes on campus.

Christensen observed that "[d]uring the past twenty years there has been a remarkable growth in American education institutions and with this growth the business of these institutions has increased enormously." He thus claimed, "The American university has become a large business corporation, and this business should be conducted according to the approved methods of modern corporations." More specifically, he maintained that the business of a university should be conducted in "a business-like way" on a "thoroughly sound and efficient basis" and he assured that would not "interfere with the proper freedom and development of the university as an educational institution."

Under this framework similar to those of Cooke and Pritchett, the task that

⁶⁶ However, we should be cautious to decide whether Pritchett and Cooke were the sole source that advocated the ideas of efficiency and scientific management to those business officers.

concerned Christensen was not to discern what was business on campus, for he had no confusion about what was business; his task was how to do the business in the right way, and the first step of this right way was a “reorganization” of university business according to the principle of “concentration.” However, this “reorganization” was faced with obstacles because the prevalent manner of conducting business was “scattering through a number of offices what should be done in one office and under one authority.” It is interesting here to see how Christensen came into direct conflict with people on campus in positions not in the category of business officer. It was among the deans and department heads that “powers and duties” had been “scattered.” It is also interesting to see how Christensen crossed the demarcating line between business and educational matters to present his criticism:

If I should be asked to name the one thing which I consider the most important step for an efficient business organization, I would say concentration. There should be concentration not only in the business but also in the educational administration. This scattering has frequently been caused by powerful deans or heads of departments assuming powers and duties which properly belong to the executive officers of the university proper.... Without doubt, much of the detail work which is now being done in the offices of deans and heads of departments, in many institutions, could be better done in central offices under central authority. This applies not only to business administration, but also to educational matters.

In contrast, Christensen outlined his view of the ideal organization of business. It “provides for a division of the administrative duties along two lines: First, educational; and second, business.” The president heads the educational division as well as the entire institution; “but the details of all business matters are

placed in charge of a business manager or comptroller.” To implement his concentration principle in this way, Christensen elevated the business manager’s position to the top level of university administration, equal to that of the university president. What is more, this business manager must locate himself at a position that can monitor university operation, education included, so as to judge what is the business part of it, or what is business related:

The business manager would also be the logical secretary of the Board of Regents, or Trustees. It is highly important that the business manager be present at all meetings of the Board so that he may see that all matters relating to the business side of the university are properly looked after.

Christensen’s blue print was actually reflected in the career trajectory of Shirley Smith. Under the principle of concentration, Christensen’s “study of university business administration” (title of his presentation) drew an outline of business organization, which included three basic components: business office made of accounting department and purchasing department; superintendent of buildings and grounds; and consulting engineers and architects. The specific content of this organization may not be as important to this dissertation as its two features: it should be “capable of indefinite expansion;” and it presupposed “the organization of the university as above given with a division between educational and business activities.” An organization thus described should be open enough to include more functions that can be rationalized as business-related, and more importantly, it bestows on business management a stable structure that is capable of perpetuating. If Pritchett’s use of administrative “machinery” puzzled us with its vagueness, here

from Christensen, we receive a concrete specification of organization:

With an organization as above outlined, the proper machinery would be provided for efficient management and for the installation of an adequate accounting system.

The achievement of efficient management was to be effected through the design of an organization that could run automatically, accurately and powerfully as a machine in the high time of the industrial development. This organization was to be a platform to systems. "To improve matters and to make it possible to install proper systems, it will be absolutely necessary to have the proper organization."

Thus, machinery, organization and system were the crucial elements of Christensen's conceptualization for business administration of universities.

Two papers in the 1916 proceedings dealt with the construction of business administration in universities. W. B. Castenholz, comptroller of the University of Illinois presented "Economical Business Administration of State Universities," while H. J. Thorkelson, business manager from the University of Wisconsin, presented "Relation of the Business Office to the Educational Division of the University."

One problem Castenholz depicted in the way of gaining economical business administration was too many independent business units on campus. Centralization was his coordinating and streamlining mechanism to reduce clerical staff and paperwork, to unify business policy, and to let people know where to go to complain. It is worth noticing that the unification of business policy was not to be achieved through written-down rules, but rather, through one-person control through the position of comptroller. This means that the responsibility of business

management had to be relocated on campus.

Of seven solutions Castenholz raised to shake up business administration, one was “the elimination as far as possible of all business activities within the instructional departments and colleges.” The biggest target was departmental bookkeeping. “If we can eliminate departmental bookkeeping, we will have accomplished about the largest economy in university activity.” Castenholz recognized that the departments did have needs for bookkeeping. His solution relied on two new devices. One was a monthly financial statement created by the Business Office for the departments:

The first essential to the elimination of bookkeeping in the departments is to give the departments intelligent monthly statements – statements that can be checked in detail. These statements should show the total appropriations, the disbursements in total at the beginning of the month, the disbursements in detail during the current month, the encumbrances and the final free balance. If any receipts are to be credited to appropriation accounts, these should also appear in detail.

Another was a filing system within the department, particularly if “it wants to be able to check the monthly statements without consulting the Business Office files.”

This device is a vivid example of the dictionary definition of system: an assemblage of parts that form a complex or unitary whole.

Requisitions should be on separate forms for outside purchases, stores orders and job orders. As requisitions are made showing the estimated cost, they should at once be put into encumbrance files segregated into purchase orders, stores orders and job orders. When the requisition is filled, the department approves the voucher sent for approval by the Business Office, and inserts the voucher amount on the requisition and then files the requisition in a disbursement file. The disbursement file will then afford a check on the monthly statement from the Business Office and the other files will verify the encumbrance.

What Castenholz suggested followed the line of thinking by Cooke and Christensen: the differentiation of business administration and academic work within the university. Consequently, the division of labors created asymmetry in the distribution of information and required coordination and collaboration. In this specific case, the new device for that purpose was a paperwork sequence and a set of classification.

Thorkelson was concerned with the same issue of building the connection between business administration and academic work once they were separated. He criticized the divorce between the two categories, and argued that business officers need to know what is important to education, because the duties of the top business officer are becoming more and more educational.

Some say that the purchase of a microscope is a purely business matter. This is true as far as the duties of a purchasing agent are concerned, but the question of whether the purchase shall or shall not be made is an educational matter. While with smaller institutions questions of this latter type may be decided by the Dean or President, in the larger institutions more and more problems of this, or a similar, nature are turned over to the business department, and the duties of the Secretary and Business Managers, because of this situation, are becoming more and more educational in their character.⁶⁷

What he suggested was a boundary spanning strategy for the business officers to get more involved in the academic work and academic decision making:

...[t]hose in responsible control, given the title of Dean of

⁶⁷ In Castenholz's paper, the decision-making power of the business officer over the matter of purchasing was stated more explicitly. He said, "The Business Office, of course, reserves the right to turn down any of these orders (from the departments)." He did not explain on what ground this rejection could be justified.

Administration or Vice-President, required to attend faculty meetings and to serve on Faculty committees in order that they, through this contact, may be of the greatest service to the faculty members and to the institution, and thus better enable them to accomplish their maximum of effect with the minimum of effort.

The construction of university business administration was firstly to split the house, but gradually, the above quotations show that there came the realization that a new unity should be regained somehow.

In 1921, Christensen summarized the decade-long development of university business administration in order to rationalize the best way of organizing. Entitled "Principles of University Business Administration," Christensen's presentation provided four sets of principles, respectively, on classification of business functions, organization, co-ordination and operation. By principle of coordination, he referred to the coordination of the departments within the business organization, the coordination of the business departments with the instructional and other university departments, and the coordination of financial and academic records.

For the business departments, coordination meant to "work in harmony with, and under the general direction of, the Business Manager." Between the University's business organization and instructional and other University departments, the former should always "be considered as a service department" to the latter, and should relieve the latter of "administrative and business details as far as possible." He underlined the following sentence to make his point: "The University does not exist for the sake of the business departments, but the business departments exist so that the University may be possible." Christensen considered

the coordination of financial and academic records as of vital importance, because “[t]he academic records give information concerning the products of the institution, and the financial records the cost of these products. The financial records should be interpreted in the light of the academic records, and financial income and expenditures should be classified in accordance with academic organization units.” The two sets of records combined should provide vital information to decision-making for the sound operation of the University. Interestingly, Christensen only mentioned “executives and administrators” as the users of this information, but not the faculty.

Following Pritchett, the builders of the university business administration never considered informing faculty of their side of the university operation. To regain a new unity to certain extent, Pritchett looked upon the scholarly sympathy of business managers, and Christensen in 1912 and Thorkelson in 1916 suggested that business managers to attend faculty meeting. To them, the receivers of the information for monitoring university operation were the Board, the president, deans and department heads but not the ordinary faculty members. Besides Cooke’s rationale of functional labor division for the sake of effectiveness, one explanation may come from how the business officers characterized faculty members and the business management work. Thorkelson described faculty as “with many temperaments more or less idealistic and artistic in nature, impatient of business routine, rules or official red tape” (p. 31). Pritchett called university management as “burden of daily routine.”

While the involvement of faculty members in university business management was rejected by these business officers, they all acknowledged the function of faculty in teaching and researching as one of the most important in the University, and recognized faculty as most essential to a University. We have learned Pritchett's statement about the purpose of a university, and Christensen's insistence that business management should serve the academic work. Thorkelson stated, "All will undoubtedly agree that instruction and the advancement of human knowledge are the paramount activities of a University,..." (p. 31)(emphasis in original). In the same paper:

While the best treasures of knowledge may often be found in books, the most productive sources of inspiration are to be found in virile minds and clean idealistic lives. If this is true, what single factor can be more important to a University than the personnel of its faculty. Buildings, grounds, books and apparatus are but mere accessories (p. 32).

Similarly, Castenholz maintained:

[T]he chief purposes of any university are instruction, research and extension. It is, therefore, the duty of every business manager to conduct the business administration at a minimum expense commensurate with the highest efficiency. It is his duty to so organize the university as a business unit that every available dollar possible can be devoted to the three real purposes for which the institution exists" (p. 44).

Faculty should have found these statements about the functional priorities of a university very agreeable. These business officers never forgot to emphasize their service role to the university's academic function. They were nothing less than the ideal businessman, the wise counsel to faculty, as called for by Henry Pritchett in 1905. Although it is true that the reorganizing carried out by these business officers

elevated their status on campus, their higher status also came with more responsibilities. From their reasoning exhibited in the Association proceedings, what we can infer is not so much the self-serving interest of these business professionals, but their embracing of a particular organizing logic generated out of the scientific management practice of industrial manufacturing. In the following section, I examine the accounting methods borrowed by these business officers from business corporations, accounting being another major influence on modern management.

Implementing Uniform Accounting

As mentioned earlier, at the gathering of university business officers in 1910 that eventually led to the establishment of the Association, a public accountant, Harvey S. Chase,⁶⁸ was invited, because Chase's accounting firm at Boston, Massachusetts was preparing a uniform system of reports, to be used by the Carnegie Foundation for the Advancement of Teaching in securing annual reports

⁶⁸ Harvey Chase was a municipal accounting expert. Under the President's Committee on Economy and Efficiency, which Taft proposed in 1911 to facilitate the introduction of business techniques into the federal bureaucracy, he was one of the three expert appointees on the commission and mainly responsible for the papers issued on auditing and reporting problems (Previts and Merino, 1979). He also "traveled extensively within the United States to act as a consultant to municipalities installing new accounting systems" (Previts and Merion, 1979, p.133). According to Previts and Merino's *The history of accounting in America* (1979), the use of accounting for auditing and reporting purposes had a long history as far back as when the crew of Columbus were dispatched by the Spanish monarchs, and thus its involvement in the administrative reform of the public institutions should be considered separately from the pervasive influence of business management arising from the industries. As a profession, the public accountants seized the opportunity in the administrative reform of the Progressive Era, actively providing advice and accounting services for political reform agencies.

from colleges and universities. The 1911 meeting of the Association left no record. The 1912 meeting program recorded a presentation by Carl Steeb of Ohio State University and W. E. Baker, the State Accountant, entitled "The Experience of Ohio State University with the Uniform Accounting Forms Proposed by the Carnegie Foundation." No paper was kept in the proceedings, but obviously, the uniform accounting system was carried on.

One rationale to install uniform accounting was to consolidate and centralize the accounting within a university. A second rationale was to render data of different universities comparable.⁶⁹ A third rationale was to adopt the best practice based on the result of comparison. The actual process that took place largely in the beginning years of the Association up to 1917 was through voluntary imitation among the universities participating at the Association, once the Association stipulated standardization.

In 1913, the participating universities agreed to adopt the standard form of five major divisions for the tabulation of university receipts: receipts from 1) students, 2) investments, 3) grants, 4) gifts and 5) various sources, leaving the

⁶⁹ None of CFAT's documents on uniform accounting were located, but in the Association's proceedings and the rationales for implementing the uniform accounting in universities can be found. In 1916, Addison Brown of the Michigan Agricultural College read a paper on "Uniform Classification of Expenditures," in which he stated that one of the aims of unifying the system of accounting of the various colleges and universities was to make rapid and easy comparisons, not only by experts, but "by the laymen, whether in his capacity as college professor or as citizen at large, even when representing his constituency in the legislative halls of the State Capitol or of Congress" (p.36). The media to conduct such a comparison was financial reports by individual colleges or universities. Brown also explained the contemporary cognitive trend behind this urge to compare: "This is a day of analytical methods: we investigate and conclude through a careful study of details. We seek to compare things supposedly alike" (p.35). What Brown left unexplained was the purpose of doing these comparisons.

adoption of sub-divisions in these captions for subsequent action. The meeting had an exhibition of expenditure summaries, and discussed the adoption of a standard form for the classification of expenditures. The participants agreed to “classify as far as possible university expenditures under the main divisions of the university or college somewhat according to” eleven categories: 1) departments of instruction and research (grouped into colleges or schools); 2) university extension; 3) summer school; 4) general library; 5) secondary education, 6) administration and general expenses; 7) operation and maintenance of physical plant; 8) agricultural experiment station; 9) state offices and public service activities; 10) buildings and permanent improvements to physical plant; and 11) such other captions as the organization of each institution may require. An ad hoc committee was set up to collect a statement of the receipts from each participating university for the year ending June 30, 1913, which was to be made in accordance with the classification adopted at this meeting.

In 1914, the meeting presenters spent time on various issues, such as student enrollment, overhead charges, student fees, purchasing, maintaining motor trucks, or janitor service. Two presenters showed the forms they used. One was Geo Frazer of the University of Illinois, who distributed to members copies of voucher forms he had adopted. The other was Christensen of the University of Michigan, who showed a sample of purchasing order forms with detachable acknowledgment and accompanying tracer and permanent record card.

In the 1915 meeting that took place at the University of Michigan, more efforts were made to comprehensively compare the forms used in individual

universities. Before the meeting, Shirley Smith, the meeting organizer, instructed the participants to “bring to the meeting one complete set of all blanks or forms used in the conduct of the business of his office, with an alphabetical list of the functions covered by said blanks” (p. 23). At the meeting, a motion was carried that “all Institutions make up sets of forms, in binder, and send to each member, including blue prints, or charts, showing the business organization of the Institution” (p. 20). In addition, “each Institution [was to] prepare and send to the Secretary a summarized salary schedule of instructional force showing the number of instructors of each rank at each salary” (p.23).

In 1916, uniform classification of expenditures was discussed and a special committee⁷⁰ was set up to prepare “a Schedule of Standard Classification of Expenditures.” The committee met in the month after the annual meeting. Its report was amended and adopted at the annual meeting the following year.⁷¹ The report suggested classifying the expenditures along two lines, namely by

⁷⁰ The committee consisted of Christensen at the University of Michigan as chairman, Hayes at the University of Minnesota, Steeb at Ohio State University, and McCaffrey at the University of Wisconsin.

⁷¹ In 1917, the financial report at the University of Michigan was compiled in a separate document for the first time. Today, the combined volumes of UM’s financial report start from the year of 1917. The earliest financial report was created in 1910 by Treasurer Baker and included in the University Bulletin. Before 1910, such documents were included in the Regents’ Proceedings and can be found as early as 1839. Annual reports on the receipts and disbursements appeared in the Regents’ Proceedings as early as 1839. They were firstly produced by the Finance Committee of the Regents, and then by the Treasurer. In the combined volume of Proceedings for 1906 and 1910, it seems the Finance Committee tried to deliver a financial report, and conducted the budget report in different formats, while the Treasurer’s annual report continued. During this period of time, Treasurer Soule retired. Baker filled the position temporarily, before resigning to work for industry. Campbell arrived and started his long career at UM until 1940s. Campbell continued to deliver the Treasurer’s annual report in the format of receipts and disbursement, until 1917, when a joint report by both the Treasurer and the Secretary was printed separately from the Proceedings and served as the financial report meeting the requirement of CFAT for uniform report among higher education institutions.

organization units and by service and commodity.

The classification by organization units aims to arrange all the departments and other divisions of a college or university into logical groups, while the classification by service and commodity aims to provide a plan for the minutest subdivision of the objects of expenditure in logical order and in accordance with modern accounting practice” (p. 66).

The grouping by organization units separated principal activities such as administration, instruction and research,⁷² general expenses, operation and maintenance of the physical plant and additions to the physical plant. There were seven principal subdivisions, which were supposed to allow indefinite subdivision.⁷³ The service and commodity classification included two general divisions: expenses and capital outlay, each with two additional subdivisions. Expenses included salaries and wages, and material, supplies and services other than personnel. Capital outlay included equipment, and lands, buildings and land improvements.⁷⁴ To suit individual cases, this grouping expected further divisions to be made.

When cost accounting emerged as a concern to the university business officers, the continuous implementation of uniform accounting no doubt included a uniform cost accounting.

⁷² This division based on organization unit may make the differentiation easier. In the 1916 meeting, Hayes read a paper on University Budget, in which he was troubled by the state requirement to provide estimated division of the cost of administration, instructional, research and experimental work. He gave an example of a dean to demonstrate there was no line of distinction between research, experimental and instructional work.

⁷³ Since Christensen was the chairman, it is not surprising to see this feature in the design of the system, which is consistent to his principles in designing the organization of business management.

⁷⁴ This classification reflects the practice of cost accounting to include both variable cost directly contributing to production (expenses) and fixed cost that indirectly contributes to production.

Implementing Cost Accounting

Before cost accounting entered the meeting agenda of the Association in 1912, the conception and methods of cost accounting as a management tool had evolved for a century. It has a long history back into the British industrial revolution. In the United States, Johnson and Kaplan (1987) find that as early as in 1812, New England textile mills had used cost accounts to monitor the direct labor and overhead costs of converting raw materials into product. Before that, bookkeeping mainly recorded the transactions with external business units, “a record of relations determined in the market” (Scott, D. R., 1931, p. 143). Instead, cost accounting was a control tool for managers within the business to rationalize the internal producing process for reduced cost of production and improved profitability.⁷⁵ In the development of cost accounting, concepts changed with regards to what should be taken into consideration as costs and how to measure costs in financial value.

In the latter half of the 19th century, at the rise of big business of the

⁷⁵ Johnson and Kaplan (1987) argue that management accounting relied on cost management, but when the latter turned into cost accounting, the relevance had been lost. The three terms of management accounting, cost management and cost accounting thus have different nuances in their work. The term of cost accounting in this dissertation is used in a more generic way, since this dissertation focuses on how management used accounting to monitor cost as a crucial control tool to structure and operate a large and complex organization. One argument made by Johnson and Kaplan is that it is an error of historians to associate the origin of management accounting with the rise of big business, especially the railroad companies. Through their historical research, they point out that management accounting preceded the big business. “It did not arise because vast organizations required it. On the contrary, management accounting itself may have facilitated the growth of large-scale firms.” They also argue for a reversed causal relationship between size and management accounting: “Management accounting focused people’s attention on the potential gains from internal coordination of economic exchange, thereby encouraging manager-entrepreneurs to increase the size of their firms” (pp.20-21).

manufacturing, rail transportation and distribution companies in the United States, cost accounting took on a prominent role in management (Fleischman & Tyson, 1993; Johnson & Kaplan, 1987; Locke, 1984; Previts & Merino, 1979). To give an example in manufacturing, Alfred Chandler (1977) describes the function of the cost system of Andrew Carnegie as follows:

The minutest details of cost of materials and labor in every department appeared from day to day and week to week in the accounts; and soon every man about the place was made to realize it. The men felt and often remarked that the eyes of the company were always on them through the books. (p.268)

In addition to evaluating the performance of department managers, foremen and men, the cost sheets were used to check the quality and mix of raw materials, evaluate improvements in process and in product, make decisions on developing by-products, and price non-standardized items in particular. Around 1900, waves of mergers saw firms integrate engineering, purchasing, manufacturing and distribution activities to offer varied products. Control information not only allowed the firms to handle the size and complexity, but also to demand such a growth in both dimensions.

To evaluate a company's internalized process was the common purpose of management through cost accounts, but each type of business identified a unique type of accounting information for this purpose. Manufacturing firms looked into the direct cost of converting raw or semi-finished material from one stage of production to the next; to railroad companies, it was the cost per ton-mile; and to

wholesale and retail companies, stockturn. Following the logic of cost accounting, the universities would have to decide what cost unit they would use, what were costs and what were products.

Cost accounting first appeared in Christensen's presentation in the 1912 meeting as one of the issues he studied of university business administration. His reservations about implementing cost accounting in a university were conspicuous. In his presentation, we learn that Harvard University had installed a "complete cost system" by hiring an accounting firm, but given the practice, the university authorities had doubts about "the advisability of carrying on such a system." Christensen's critique of cost accounting for a university lay in the difficulty of determining a basis for cost accounting similar to the bases used by various industries. He was also concerned about how misleading the information derived could be. He used the example of cost per student-hour to argue that comparing a department with small enrollment and another with large enrollment on that basis did not make educational sense. It would especially be dangerous if this data was used to decide what proper development of education should be. On this ground, he stated that the cost of operation of an educational institution should not be analyzed "in the same manner as a manufacturer would do to determine the cost of making an automobile."

Christensen's argument⁷⁶ may have deferred the implementation of cost accounting in the instructional context, but did not stop it. Adoption of cost accounting moved gradually from auxiliary sections of universities to the instructional section. In 1914, Shirley Smith presented *Cost Accounting in Hospitals, Laboratories, Commons, and Eating Clubs*. Carl Steeb of Ohio State University presented on "general cost accounting for trucks." Next year 1915, the area of cost accounting broadened. Among topics listed for the discussion of shared problems was "university cost accounting; essentials and forms." In 1917, W. H. Bates of University of Iowa discussed methods of accounting for unproductive time of employees, a cost accounting subject. In 1920, a committee of three was appointed to report recommendations on Cost Accounting. The committee was composed of Lloyd Morey, E. B. Stevens, and H. J. Thorkelson.

The next day at the meeting, they reported to the Association on instructional cost accounting. They stated that "this Association should recognize at this time its opportunity and responsibility of developing and perfecting a uniform accounting system for Instructional Costs." They suggested that the units around

⁷⁶ Although Christensen disputed the use of a "basis" for cost accounting, he was not against controlling cost. In 1921, he stated, "The co-ordination of financial and academic records is of vital importance. The academic records give information concerning the products of the institution, and the financial records the cost of these products. The financial records should be interpreted in the light of the academic records, and financial income and expenditures should be classified in accordance with academic organization units. It should be possible in a modern University to provide, on short notice and in summary form, all important items of academic and financial transactions for the use of executives and administrators." He viewed the university operation management in a way akin to factory operation management with product and cost in concern. The information, in his view, was for managers.

which to build such a system should be the instructional department and the student clock hour of instruction. The special committee believed that there were three essentials to establish this system: a uniform classification of accounts, which they believed was in place already; a uniform system of enrollment reports; and a uniform and accurate system of distribution of instructors work. They recommended continuation of this study so that they could examine the current practice and report to the Association at next meeting.

Thorkelson's two presentations at the Association in the 1917 and 1921 meetings may help us to understand the determination of the business officers to install instructional cost accounting. As one of the three committee members taking charge of the study of instructional cost accounting, Thorkelson reasoned in reaction to problematic statistics generated outside of the university or used by university administrators who did not know accounting. Christensen in 1912 warned about the use of misleading data by demagogues to harm the education cause. This seems to be what happened.

In his 1917 presentation, Thorkelson was furious at the evaluation of university efficiency by "the so-called efficiency expert" and "the statistician." He gave instances such as counting a bed as 33% efficient because it was only used eight hours a day or the efficiency of many other items by time used in a day. He also mentioned a state-published report on costs per student of the various state universities which listed the cost of the University of Wisconsin as three times that of the number recognized by the university itself. In light of this situation, he

advocated for “an aggressive attitude toward correcting these matters as speedily as possible, and to determine a suitable basis or foundation on which to build.” The attention of the outside world to instruction cost was caught by decision-makers within the higher education.⁷⁷ In 1921, Thorkelson had an even more elaborated critique in “Sense and Nonsense in Educational Report and Statistics,” in which he disputed erroneous calculation of instructional cost by university administrators, the Commissioner of Education and the National Association of State Universities. To present accurate figures to university officers for improvement of university effectiveness and to the public for their continuous support of universities, Thorkelson maintained that the Association of Business Officers should develop instructional cost analysis, and should collaborate with organizations such as the Association of Land Grant Colleges, the Association of Registrars, the National Association of State Universities and the Commissioner of Education.

Thorkelson’s 1921 paper contrasted what was wrong and what should be done. While he acknowledged the managerial and accountability purposes of cost

⁷⁷ In his *Education and the cult of efficiency* (1964), Raymond Callahan provides a thorough examination on how business values influenced the administration of the public schools in the early twentieth century. The same forces were acting on higher education too. Thorkelson’s following words revealed the trends of his day that he was fighting against: “The mere fact that we may be encouraged by well-meaning administrators for whom the words cost analysis, efficiency, scientific management and depreciation have a glittering fascination does not justify such crimes against the cause of education.” While administrators in the public schools embraced the business practice and values, the university business officers formed a force within higher education to point out the problems of those calculations of “efficiency” and to resist the ridiculous cost calculation and reduction practice that had been widely implemented in the public schools during the same period of time.

analysis, he argued that the correct calculation of instructional cost had to be based on a differentiation of direct and indirect instructional costs from non-instructional related cost. It would be meaningless, according to Thorkelson, to measure the effectiveness of teaching by dividing the gross disbursements by the catalogue enrollment of students. Second, he argued comparison of cost between courses and between departments should be avoided as an attempt to measure immeasurable items. In other words, the analysis should not be used to compare cost between courses or departments, because that would indicate distributing overheads to the level of course or department, which was, in Thorkelson's view, inexcusable.

Thorkelson outlined in 1917 what should be done. He made suggestions of dividing university activities by function,⁷⁸ and classifying the disbursements. Then he used student credit hour as the unit of measuring instructional work to calculate the salary cost per student credit in a department, which should be considered as the unit cost. His explanation on the use of this unit cost is worth quoting at length:

It is of course understood that this information is not to determine such important questions of educational policy as to whether a certain course is to be continued or discontinued, but comparative data of this kind will be of great service in determining how unit costs are changing from year to year in different departments and thus enable executive educational officers to anticipate many problems and to plan their departmental budgets along more consistent lines.

To what an extent the cost accounting should affect educational decisions

⁷⁸ Thorkelson listed teaching and research as the primary functions of a university. He argued these two should be separated, but he then explained the difficulty to do that since not only were these two activities difficult to tear apart, but also there was no clear and common definition about what counted as research.

was very ambiguously expressed in the above quote. Present scholars who criticize the business model in managing universities are infuriated exactly by how “comparative data” has entered the decision-making about offering a course or not. This may not be the consequence that the business officers in the early 20th century could foresee, but their accounting infrastructure is here to stay, and an alternative university affair management method had better tackle with the logic of cost accounting but not people on the position of university business administration.

Analysis and Conclusion

The establishment of the business office at the University was not only an addition of a unit to the institution, but part of a fundamental restructuring of the University, and the creation of an organizational machine. It created the separate categories of business administration and academic work, established the labor division, reassigned authority accordingly between administration and faculty, and designed the structure for the University to become a system with distinct yet closely interdependent components. This transformation was largely responsible for the formal organization of university that we are familiar with today. It was vast and complex beyond the direct control and immediate comprehension of most people who work or study within this structure, which was why it seemed to assume the autonomous and alien characters of a machine. It supported the staggering expansion of the University and was highly productive in its operation just like a

machine, the hero of the industrial age.

The advent of this organizational apparatus at the University of Michigan was not merely a local invention, but rather, its model was borrowed from the industrial and business sectors, where large and multi-divisional firms dominated. These firms developed a highly complex management system using engineering and accounting methods to collect information and control cost. It is no wonder that these methods attracted the attention of university officers in charge of book keeping, treasury, purchasing and other business affairs.

Before these methods were introduced to the university, the first obstacle to be overcome was to ascertain their impact on the very character of the university: would such borrowing transform the university into a business corporation? The answer, for most proponents of the business model, was no, as they argued that the university was not a factory or a business, but there was no reason that the business management of university should not be like the business management of a business corporation. The superiority of the latter seemed beyond doubt.

However, the actual implementation of such methods revealed that the reform could by no means be confined to any particular component of the university. The logic of business management which originated in the large industrial and business corporations at the turn of the 19th century demanded the fundamental reorganization of the university. At the University of Michigan, the university operation was reassessed and regrouped. Business affairs were identified, defined and functionally separated from academic work. While the academic

department had become the basic unit for discipline-based academic activity, the business affairs adopted a centralized structure with a single individual at the top who was informed of the whole picture.

In this formative process of functional separation and specialization of the university's business affairs, management activities were categorized, classified, standardized, and systematized, and university work was measured in monetary terms. The conceptualization of these specific implementations was conducted outside of the University – in the Association of Business Officers of the State Universities and Colleges of the Middle West. The presentations and discussions recorded in the Association's proceedings amply demonstrate the conceptual and methodological influences of scientific management, systemic management, uniform accounting and cost accounting, which were the most important engineering and accounting inventions characteristic of modern management at the turn of the 20th century.

The Association of Business Officers advanced the professionalization of the university business officers. Although it was based on individual, rather than institutional memberships, like many associations which appeared in the early 20th century, it was implicitly an association of the universities with which the business officers were affiliated. The involvement of individual business officers had to be meaningful with the involvement of the universities. The cost control had to be meaningful when the individual universities were compared. In this sense, the business officers created a system through their Association to coordinate the

business management of individual campuses. It is this normative system that embraced each campus and connected them instead of the marketplace depicted by Clark.

It was in this way that the best business management methods introduced to universities fundamentally changed academic work and, indeed, continue to affect the latter. The business officers were in charge of the management of the resources for academic work through a system incomprehensible to faculty, beyond the control of any individual campus or business officers, and with structures and management tools borrowed from large industrial and business corporations. In short, they introduced the industrial rationality to the university operation.

However, my point is not to argue that the business officers carried out the management reform to promote their own professional interests. All such transformation was conducted with apparently sincere discussions among business officers on how to best serve the interests of a university, in a way which was more than lip service or mere rhetoric. The examination of the reasoning in the Association proceedings reveals the power of the discourse of industrial rationality, rather than narrow, self-serving intentions. A look at the biography of leading figures of this management movement also reveals their sincere concern for the public and university interests as the motivation of their action. The hazard that this management system may have brought to the University must be discerned by analyzing how the industrial values and logics penetrated the conduct of academic work.

The power or effects of the organizational apparatus of the University of Michigan is very difficult to evaluate or measure. Neither can this single case study show us compellingly how having or not having this management system, or different systems would make differences among universities. Nevertheless, it seems rather clear that what enabled the prosperity and superiority of large American industrial and business corporations in the world in the first half of the twentieth century also enabled the American universities to be successful giants on the way to the multiversity.

CHAPTER VI

CONCLUSION

The institutional setup when the University of Michigan was formed authorized the University to be a public infrastructure directly responsible to the people. This institutional autonomy protected the University from government stipulations, and the normative obligation to promote the welfare of the people was institutionalized by investing the supervision of University affairs and the management of University property in publicly-elected Regents, a governing body whose immediate task was to think for the best interests of the University.

The University's constitutional autonomy and corporate form of governance had to go through a nearly 50-year homeopathy battle before being eventually confirmed by the state's Supreme Court. This historical process involved the Regents, the Legislature, and the medical profession of opposing schools – regular medicine, which dominated the University's Department Medicine, and homeopathy, which struggled to enter the University as a legitimate instructional program. Although this history has most often been portrayed from the University's perspective as the latter's heroic battle for political independence, this study sheds new light on its significance by including the medical profession in the analysis and taking into consideration Habermas' historical account on the dichotomy of public

and private. Specifically, this study reveals that the “independence” resulted in the University’s undeterred involvement in the economic activity of medical practice regulated by the dominating medical profession of regular medicine. Not only was public intervention through the Legislature effectively fended off, but public opinion also lost its access to the University.

The University was crucial to the medical profession with regards to training, establishing the validity of medical doctrines, and granting the right of licensing. It became a contested field to rival schools in the medical profession which competed for market of clients and monopoly of practice. Although the rivalry with the medical profession was about economic activities which took place in the private sphere, the homeopathy practitioners formed their requests as public opinion through political channels provided by the public sphere of the political realm. They submitted petitions to the Regents meetings where public requests were processed with records kept for the view of the public. They lobbied the legislators to turn their requests into public law. The legislature then referred the petition to the Regents’ attention before it started employing formal intervention by issuing laws in this regard. The historical documents examined in this study provide sufficient evidence about rational-critical communication as key to the proper function of the public sphere, since, for example, the Regents’ reports, the President’s reports, and the judge rulings were all produced as public records addressing a public audience. The use of the mechanism provided by the public sphere of the political realm justifies considering the homeopathy petitioners as the Habermasian public formed

by private peoples, or in the language of the Michigan Constitution, the people.

However, it was not the rational-critical communication that solved the conflict, but the constitutional autonomy that allowed the Regents' to take the easiest path under the pressure of the regular medical profession. Among the reasons that Regents gave for not incorporating homeopathy in University instruction, constitutional autonomy was mentioned but never really prioritized. The Regents made it very clear that it was the institutional arrangement of the medical profession outside of the University and in the market that rendered impractical the teaching of homeopathy in the University, for the graduates would not be able to receive license and practice. In comparison to the University's more welcoming reaction to concurrent requests from other professions or businesses, such as dentistry and mining, its rejection of the homeopathy request as the result of the regular medical practitioners' pressure is even clearer.

The constitutional status did not provide the University with absolute autonomy, but subjected it to "the people." Since the people lacked a representative other than the Legislature or the Regents, the homeopathy request was not considered a legitimate public request. In this situation, the first time that the University and the Legislature arrived at a do-able plan regarding the homeopathy school was through legislative allocation of tax dollars to fund this particular addition. It may not be too far from the truth to call this a government purchase of university service, which resembles more a business relationship between the two institutions than the fulfillment of the people's will.

As the fiduciary agent of the University, the Regents' immediate task was to make decisions in the best interests of the University. The status of the University as a public infrastructure justified the equation of the interest of the University with that of the people. The foundation of this corporate form of governance was the proprietary function of the Regents. Consistent with the corporate right of property ownership, once the state appropriation was allocated to the University, the funding became University property, and the Legislature could not take it away without the consent of the Regents. This proprietary status made it possible for the Regents to be involved in market-oriented relationships. However, even though the homeopathy case revealed that the University had entered the market as an important link of the economic activity, it is not necessary that every property owner must follow market logic or conduct market exchange with all types of social relationships.

The homeopathy case is limited in displaying a more comprehensive picture of the relationships between the University, state and society because of, first, the limited types of protagonists involved, and secondly, the particular historical period characterized by the comparatively simple social structure of the liberal capitalism. The agrarian Midwestern economy was not transformed by the railroads until after 1870s, and the auto-industry in Detroit started rising at about the same time. It was not until the 1870s that the concentration of wealth, industrialization, and the control of the market by large corporations started shaping the Midwest, intensified economic and political conflicts, spurred the farmers' movement and resulted in the

Midwest progressivism (Nye, 1951). Laissez faire capitalism thus transitioned to corporate capitalism.

In Russel B. Nye's *Midwestern progressive politics: A historical study of its origins and development 1870-1950* (1951), he dedicates one chapter to the role of the universities in the progressive politics since 1870s. John Bascom, the president of the University of Wisconsin stated that what universities needed to teach was sound citizenship. His student, a famous progressive politician, Robert La Follette acknowledged that what he learned from his college experience was a proper attitude toward public affairs. A survey of Midwest universities suggested an academic atmosphere that was "intellectually energetic, aggressive, liberal, and ardently patriotic," and a commitment to "teaching people to reason" (Nye, 1951, pp. 156-157). To the classic idea of cultivating persons through education, religion and morality, as dictated in the 1787 federal ordinance, was added the cultivation of rational-critical reasoning ability for individual citizens' participation in the public sphere, which was expanded from a bourgeoisie public sphere to include deprived farmers and workers, the proletariat.

The world of letters migrated to the universities, where we see scholars in sociology, economics, political science and other social science disciplines, such as Lester Ward, Albion Small, Richard Ely, John Commons, Edward Ross, and Thorstein Veblen (a Midwesterner of Norwegian parentage), seriously rethink the new economic and political order, and reclaim the human and ethical foundation of economics against the ideology of the Gospel of Wealth and Social Darwinism. The

universities became a space that incorporated the ambivalence of the bourgeois public sphere, only in a more complicated way, because the university included its own enemy in its civic mission, given the fact that there were university presidents and faculty members standing in defense of the existing social order and promoting “general contentment” and the Social Darwinism.

The institutional autonomy based on the corporate form of governance and the academic autonomy lodged in academic leaders and faculty serve different purposes, the former for local management in the private sphere of economic activity and the latter for potential critique of the existing social and economic order. In the case of the University of Michigan, even with a double protection (corporate form and constitutional status) from state control, we cannot overlook the organized interests that influenced University decisions or claims that it existed in a market-like place as an autonomous agent. By incorporating occupational training in university instruction, the University entered the market economy. However, it is difficult to criticize the University for serving private interests because the bourgeoisie public sphere had been the legitimate place to address interest in the private sphere of economic activity. The ground on which to found our critique of public universities is not simply business influence, but the corporate capitalist context of increased social power and minimized social responsibilities of business corporations, the diminished role of university scholars in producing critiques of current socio-economic order, and the relaxation of the universities in providing civic education.

With regards to the relationship between the American public university and

the state, this study suggests that the problem with Clark's diagram (Figure 2, Chapter 1) lies in his treatment of the state as a constant variable in conducting his international comparison. The state authority in the United States has a very different historical legacy and development from that in the European countries. Its relationship with the university as well as with the economic sector has to be examined in a relational way and by taking into consideration the legal and political institutional arrangements.

The installation of business administration in the University suggests another consequence of the corporate form and another aspect of business influence in comparison to what we learn from the homeopathy case. The drastic overhaul of university business management was possible because of the corporate form which guaranteed the power of local management by the University itself, especially with regards to managing its own property. Rather than being imposed from the outside, this management reform was largely due to the efforts of the business officers within the universities. They acknowledged and accepted the preconditions of the University's public service function, and its essential activity of knowledge production and dissemination. By claiming to best serve the University with its public function and knowledge activity, the business officers worked on the organizational structure of the University. Equipped with industrial rationality based on engineering and accounting concepts, they restructured the University operation, and began the evaluation of academic work by cost. This management reform brought to existence the organizational form of the University that we know today,

and it also created the organization with complexity that fed on itself, forever demanding and justifying more management reform, and more specialized business administration professionals.

This history sheds new light on topics of shared governance. Reasonably, we may argue that the solution to diminished faculty jurisdiction in university affairs is not as simple as curbing the power of administration, or promoting faculty participation in university decision-making. The lack of knowledge on the faculty side about the university's complex business management system forms the first obstacle. The system's logic foundation on engineering and accounting forms the second obstacle. Is there any actual evidence supporting the assumption that faculty prefer not to attend to the mundane work of administration? Under the current system set-up, what is the investment involved on the faculty side for them to capture the whole picture of the university affairs for critical decision-making? These are questions unaddressed by this study, but they suggest a different direction of inquiry from the antagonistic view of Patricia Gumpert.

This study is limited in many ways. As mentioned before, the homeopathy case took place largely during the liberal capitalist stage. The role of the university experienced drastic development when it entered the era of corporate capitalism with its heightened social conflicts, grand industrialization that demanded the development of science and technology in the university, and the increased pressure on the state authority to ameliorate the conflicts between capitalist expansion and appropriation, and maintain the welfare democracy. This is period that was

examined by Clyde Barrow (1993). This study differs from Barrow's view of the management reform of business management on campus by associating it with industrial logic rather than class interest. With more time in the future, more materials related to the public- private dichotomy in the University's interaction with state and society may be analyzed to produce a better comparison with Barrow's work.

With regards to the management reform of the business administration and its impact on today's campus, a comparative study of different universities in the United States and even across countries will provide a more informative analysis. From my own experience and what I have learned from quite a few scholars, the administrative service system of UM is quite superior to that of many other campuses. In the early 20th century, the university business officers adapted the model from the business world, they emphasized their service role, and reiterated their understanding of the prioritized functions of the university. To what extent have these adaptations been effective? How many of the administrative problems existing now on different campuses have been caused by factors other from the management model's business origin? Besides an alternative administrative structure friendly for faculty participation, these should be very interesting questions to explore.

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