JEWISH LEADERSHIP ACADEMY

"Rich or King" Redux: What Are Our Obligations to Our Jewish Communal Institutions?

By Doron Kenter

Six years ago, Mark Charendoff (President of Maimonides Fund, and my boss) wrote a piece for *The Jewish Week* in which he adapted Professor Noam Wasserman's "Rich or King" model of entrepreneurs for the Jewish not-for-profit sector. In the original model, CEOs were categorized as either "The Kings" (or, to use a non-gendered term, "The Royals") – who were primarily concerned with maintaining control of their companies, even at the expense of growth – or "The Rich" – who cared most about money and were happy to give up control in favor of maximizing profits. Investors, it was argued, were better served by Rich CEOs than by Royals. In adapting the model to the Jewish not-for-profit world, Mark wrote as follows:

Now, in our case, "Rich" is not about the CEO's own salary. It's about the CEO's drive to maximize the profitability (the social return) of the agency, even at the expense of giving up control. Or is the CEO a King, more focused on personal power and control than on really reaching the potential of the not-for-profit he or she is leading?

The argument, therefore, was that the Jewish community is less well-served by executives who principally cherish the pulpit that they occupy than it is by executives that are driven by the outputs and outcomes of their organizations' work. On the other hand, those who are "happy operating the way we are," are often too risk-averse and lack succession plans, sacrificing actual value in favor of ongoing control.

Both Wasserman and Charendoff principally directed their counsel toward investors – namely, to answer the question about which types of [founder] CEO/entrepreneurs will help investors to get the best return on their investments (from their perspective), whether in the form of profits or social return.

But what does this mean for the stewards of our Jewish communal organizations? What are the priorities, principles, and obligations that *other* stakeholders should (or must) take into account? For those serving in fiduciary roles (e.g., board members), one must begin with the legal obligations that serve as a [non-exclusive] baseline for all that they do in service of the institutions for which they serve in that critical role.

First, the Duty of Care – specifically, to exercise the care and concern as a board member as any prudent, ordinary person would. In lay terms, care as much about your role as any decent person would. Go to meetings, read reports, supervise management, be involved.

Second, the Duty of Loyalty, which bars self-dealing and requires disclosure of conflicts of interest. One might think of it as the "Though Shalt Not" that accompanies the "Thou Shalt" of the Duty of Care.

A third concept – though perhaps not a separate duty in and of itself – is the "duty" of obedience, and is more complicated, both in theory and in practice. Broadly speaking, this concept reflects an implied or express obligation that a not-for-profit's Board must act – and ensure that the organization acts – in a manner consistent with applicable law and regulations and any governing documents informing the organization's stated purpose and activities. *See Manhattan Eye, Ear & Throat Hospital v. Spitzer*, 186 Misc. 2d. 126, 152 (NY Sup. Ct. 1999) ("It is axiomatic that the Board of Directors is charged with the duty to ensure that the mission of the charitable corporation is carried out. This duty has been referred to as the 'duty of obedience'"). Regardless of whether this duty is a distinct one, the theory behind it holds true – directors of a not-for-profit are obliged to ensure that the organization's assets are used in a manner consistent with applicable law and the organization's stated purpose(s).

Practically speaking, what does this mean? Of course, not-for-profits must comply with applicable law and regulations (including but not limited to compliance with applicable tax law and corporate governance processes). But beyond that, organizations must also conduct themselves in a manner consistent with their governing documents – for example, articles of incorporation and bylaws, together with all amendments thereto. And board members must familiarize themselves with those documents to ensure ongoing compliance.

Because they can be invoked to limit a not-for-profit's activities, most governing documents are drafted quite broadly so as to leave allow the organization to adapt, shift, and otherwise explore even unforeseen territory. However, it's rare that a not-for-profit's stated mission is simply to perpetuate itself or to serve as a pulpit for a particular leader or executive. There should be an overarching sense of purpose, not just for the organization's well-being, but for the benefit of the Jewish community as a whole. Moreover, regardless of the breadth of any governing documents or applicable law, board members of Jewish not-for-profits may, like Hebrew National hot dogs, choose to hold themselves to a higher authority, beyond that which is, strictly speaking, permissible under the law. In that regard, we will be well-served to take into account the second half of Hillel's advice in *Mishnah Avot* 1:14: "If I am only for myself, then what am I?" (or as the Jewish folk band Safam has interpreted it, "why am I here at all?") What are the principles, priorities, and goals that should inform those of us charged with overseeing our not-for-profit institutions, particularly if we want to advance both the legal and ethical purposes for which the organizations have been formed?

Looking back to the "Rich or King" model, do we want to be (or support) Royals, focused on maximizing the power exerted by our executives, boards, and stakeholders, occasionally at the expense of our peer institutions? Or do we want to be Rich, maximizing the net social return of our individual institutions, as well as the Jewish community more broadly?

To be sure, people and personalities are important, and some not-for-profits are driven in large part by the magnetism, vision, and/or teachings of their leaders. Public exposure and longevity (or stability) of those in our C-suites can often help to advance the core mission. And organizational stability certainly has some value in and of itself. But we cannot delude ourselves into thinking that the true underlying goal is simply to make the organization or its spokespeople as big, well-funded, well-liked, or prominent as they can be. The organizations themselves, as well as their stakeholders, employees, and executives, must be, in the words of the *Bachelor* franchise, "there for the right reasons." If an organization is too focused on self-perpetuation or internal performance indicators, it will lose sight of its fundamental mission to actually generate positive impact for its members, its audience, and/or the community at large. It will also run a serious risk of overlooking fundamental changes to demographics or to the communal landscape that might warrant a re-examination of the organization's mission or function within our Jewish communal ecosystem.

And so we return to the Duty of Obedience (such as it is). We all like to think that we are fulfilling our duties to our organizations' fundamental missions to maximize the value of the organization, the value generated for its members or users, or the net value generated for the Jewish people (as the case may be). But are we? There may not be one single answer to how best to accomplish any particular goals. But that doesn't let us off the hook from our responsibility to both identify and remain focused on those goals. It is (likely) no breach of fiduciary duty to make hard decisions. These can include uncomfortable conversations about succession planning (for both executives and boards), strategic mergers/consolidations (and occasionally orderly wind-downs), conscious decisions to step away from the spotlight, and a sincere elevation and empowerment of our peers and subordinates (both internally and across organizations).

But it may be a breach of one's duty – or least one's moral responsibility – to avoid or overlook these issues. Decision-makers must be wary of unduly cannibalizing other organizations' work, while at the same time remaining ready to step into the breach where needs are simply not being met. We must be *mensches* in conducting our business, but we must also be faithful to our mission to provide the greatest possible net benefits to our community. We must have a positive and healthy workplace, but we must also ensure that key roles are (and remain) filled by the best for the job at that time. We must realize the difference between attempting to resuscitate an organization and simply delaying the inevitable.

We often have a choice between seeking the Keys to the Kingdom or striving for the greatest Social Good. And sometimes that choice is not so simple. Applicable laws, regulations, and governing documents may mandate one or another approach or strategy, as may moral obligations and Jewish values. But we would be well-served to educate ourselves, and *sincerely* reflect on, our obligations, aspirations, and priorities for our communal institutions. The answer may not be simple, but if these debates are had *l'shem shamayim* (for Heaven's sake), our Jewish community and its institutions will thrive and endure.

Doron Kenter is a Program Officer at Maimonides Fund.

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