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On the Future of Business Law

*Robert C. Bird**

I. INTRODUCTION

The subject of our present, and our future, is what I would like to talk to you about today. The discipline has many possible futures, and the business law faculty of today will shape the business law discipline of tomorrow. With these possible futures, challenges and opportunities will inevitably follow. We must anticipate these challenges, and prepare for the opportunities that will inevitably disrupt business education. Today, I will discuss the important role of business law in business ethics, and then present strategies for advancing the discipline on a path that keeps it vital and engaged with our stakeholders—the business school, its faculty, our students, the business community, and the society that we serve.

II. LAW AND ETHICS ON THE CONTINUUM OF SOCIAL POLICY

A. Law and Ethics Operate in Concert

Business ethics are moral values and principles that guide the conduct of business toward promotion of the common good. This simple explanation of business ethics belies a deeper and broader understanding of how business ethics evolves. Business ethicists are not cordoned by discipline, but rather

*Professor of Business Law and Eversource Energy Chair in Business Ethics, University of Connecticut; Academy of Legal Studies in Business, Ethics Scholar in Residence (2017). I appreciate comments and support from colleagues who reviewed various versions of this manuscript.

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share a common application of critical thinking and analysis to challenge established norms and values in society.¹ Law and ethics, which some see as distinct fields, are deeply connected and mutually reinforcing. Laws are hardened ethical values that are forged in debate, codified with precision, and sharpened by disputants to serve the needs of a complex society.² Law and ethics need one another. Ethics without laws lack precision of applicability and enforcement by the state. Laws without ethics lack a moral anchor and encourage self-serving behavior outside the reach of authorities. Law and ethics are on a continuum of social policy, and the ethical values of today become the legal principles of tomorrow.³ For example, bribery, once an acceptable business practice, was subsequently viewed as unethical, and eventually that condemnation hardened into law in the form of the Foreign

¹ See Peter Seele, *What Makes a Business Ethicist? A Reflection on the Transition from Applied Philosophy to Critical Thinking*, 150 J. BUS. ETHICS 647 (2018). Seele explains that a definition of business ethics “that does not exclude scholars because of their academic background” is appropriate. *Id.* at *8. Seele then concludes that a business ethicist is

Anyone, who teaches, writes about, or researches in Business Ethics understood as critical thinking—and this applies whether the person is in philosophy, management studies, economics, anthropology, sociology, law, history, or ‘you name it’—either in its specific or its general aspects, empirical, conceptual or normative, is a Business Ethicist, and what he or she does is Business Ethics.

Id.

² See Vincent R. Johnson, *The Virtues and Limits of Codes in Legal Ethics*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 25, 27 (2000) (“Forged in heated debate, codified with precision, and routinely invoked by disputants, the principles of legal ethics are today regularly enforced by courts and administrative bodies as rules of law.”).

³ See, e.g., *Clark v. Beach*, 6 Conn. 142 (1826), which explained

[T]he distinction between strict law and equity, is never, in any country, a *permanent* distinction. Law and equity are in continual progression; and the former is constantly gaining ground upon the latter. A great part of what is now strict law was formerly considered as equity; and the equitable decisions of this age, will unavoidably be ranked under the strict law of the next. No learned lawyer wants a proof or illustration of these remarks; and even our own reports furnish abundant confirmation of this unquestionable truth.

Id. at 158 (emphasis in original). See also *Spect v. Spect*, 26 P. 203, 205 (Cal. 1891) (similar). Equity was generally coterminous with fairness and ethical principles of the day. See T. Leigh Anenson, “*Clean Hands*” and the CEO: *Equity as an Antidote for Excessive Compensation*, 12 U. PA. J. BUS. L. 947, 975–76 (2010).

Corrupt Practices Act.⁴ Our work is not only the study of the law, but of ethics transcribed, codified, and regularized for application in a broad and complex society.

Business practices that promote the common good are articulated through four mutually reinforcing legal and ethical principles that I call values-driven management. The first principle is business ethics, which I define in this context to mean the internal norms and principles that underlie the functioning of an organization. These norms and principles drive the culture of the enterprise. Second is corporate social responsibility (CSR), which articulates the obligation that firms have to various stakeholders in society. This is not simply corporate *noblesse oblige*, but an enduring obligation that commands a firm to act with due regard to a broad range of interests and impacts. The third principle is sustainability, which focuses on management of common resources and an essential long-term time obligation that business has to these resources. The fourth and final principle is business and human rights, which imposes on business a dedicated obligation to respect the fundamental human rights of others regardless of economic cost to the firm. Human rights originate not from a firm's obligation, but from the fundamental and inalienable rights of individual human dignity. Though the specific terms differ, leading organizations, such as Conscious Capitalism and the Aspen Institute, think about business in a similarly holistic fashion.⁵

Business law offers a unique value proposition for each of the four principles of values-driven management. Principles of business ethics are advanced by the thoughtful work of business ethicists trained in theory, philosophy, or related methods. Such principles are then indirectly or directly implemented in organizations through codes of conduct. These codes often concretize into standards of behavior enforced by the organization. Legal knowledge and thinking makes such codes clearer and more predictable, while remaining as flexible as possible. This is no easy feat, as the drafter must articulate succinct and finite standards in the present that are applicable

⁴Note, *Bribery in Commercial Relationships*, 45 HARV. L. REV. 1248, 1248 n.6 (1932) ("Commercial bribery is considered unethical by business men."). See also Mike Koehler, *The Story of the Foreign Corrupt Practices Act*, 73 OHIO ST. L.J. 929 (2012).

⁵CONSCIOUS CAPITALISM, <http://www.consciouscapitalism.org> (last visited May 18, 2018); THE ASPEN INSTITUTE, <http://www.aspeninstitute.org> (last visited May 18, 2018). See also Rajendra S. Sisodia, *Conscious Capitalism: A Better Way to Win*, 53 CAL. MGMT. REV. 98, 98 (2011).

to an unpredictable and infinite number of future circumstances.⁶ Tools of legal analysis and interpretation enable organizations to deliver the broadest, most effective, and yet still precise expression of company values to their stakeholders.

In addition to codes of conduct, there are a number of pressing ethical questions in business that are closely intertwined with legal implications. The appropriate protection and treatment of whistleblowers, privacy and surveillance of employees at work, the role of diversity, work-life balance, ethical advertising, and worker rights are just a few of the issues where legal and ethical issues cross paths.⁷ Legal knowledge is a form of ethical knowledge, and leaders educated in business need dedicated study in legal thinking to fully inculcate ethical values in an enterprise.

Legal knowledge also advances CSR goals. No stranger to CSR, legal scholars have written about CSR since the late 1960s.⁸ Legal knowledge and analysis makes CSR not only better understood in theory but more effective in practice. Legal thinking can help build a logical architecture around CSR practices that facilitates application of CSR into novel areas of business practice.⁹ Legal environment of business faculty are also uniquely positioned to better understand whether mandating or incentivizing CSR is the most effective option for society.¹⁰ CSR has also become increasingly legalized.¹¹ Even some law firms have entire practices dedicated to practicing

⁶ See Edmond Cahn, *Jerome Frank's Fact-Skepticism and Our Future*, 66 YALE L.J. 824, 827 (1957) (describing the difficulty of applying general rules to the "infinite diversity of human affairs").

⁷ See TERRY HALBERT & ELAINE INGULLI, *LAW & ETHICS IN THE BUSINESS ENVIRONMENT* (8th ed. 2015).

⁸ J.A.C. Hetherington, *Fact and Legal Theory: Shareholders, Managers, and Corporate Social Responsibility*, 21 STAN. L. REV. 48 (1969) (applying CSR to reform relationship between management and shareholders); William S. Paddock, *Tax and Other Aspects of Business Involvement in Ghetto Development Programs*, 20 CASE W. RES. L. REV. 825, 870 (1969) (applying CSR to problems of urban development). For an example of other thoughtful work in this early era, see David L. Engel, *An Approach to Corporate Social Responsibility*, 32 STAN. L. REV. 1 (1979).

⁹ E.g., Jeffrey Nesteruk, *Corporations, Shareholders, and Moral Choice: A New Perspective on Corporate Social Responsibility*, 58 U. CIN. L. REV. 451 (1989).

¹⁰ E.g., Margaret Ryznar & Karen E. Woody, *A Framework on Mandating Versus Incentivizing Corporate Social Responsibility*, 98 MARQ. L. REV. 1667 (2015).

¹¹ See Gerlinde Berger-Walliser & Inara Scott, *Redefining Corporate Social Responsibility in an Era of Globalization and Regulatory Hardening*, 55 AM. BUS. L.J. 167 (2018).

CSR law.¹² This legalization makes an understanding of legal issues a prerequisite to utilizing fully the power of CSR in an organization.

Sustainability has become an important issue facing both business and society. How those legal and regulatory standards today should develop and what consequences such standards will have for business are questions that legal scholars are uniquely trained to raise and address. Sustainable development, especially of common resources that are vulnerable to abuse from self-maximizing behavior, is fundamentally an issue of regulation.¹³ Laws have supported sustainable practices for 750 years.¹⁴ LEED certification,¹⁵ for example, is not only governed by regulatory or quasi-regulatory standards, but also raises a number of legal issues ranging from environmental regulation to copyright protection for LEED-certified buildings.¹⁶

Finally, business and human rights are intertwined with both legal enforcement of human rights violations as well as voluntary but quasi-legal standards of conduct. Legal training can unravel the complexities of human rights law and help firms ensure compliance with voluntary regimes such as the U.N. Guiding Principles on Business and Human Rights.¹⁷ Legal knowledge can

¹²E.g., *Practices: Corporate Social Responsibility*, FOLEY HOAG, LLC, <http://www.foleyhoag.com/practices/business/corporate-social-responsibility> (last visited May 18, 2018).

¹³E.g., Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243, 1245 (1968) (noting that common resources “surrounding us cannot readily be fenced, and so the tragedy of the commons as a cesspool must be prevented by different means, by coercive laws or taxing devices . . .”).

¹⁴See Statute of Marlborough, 1267, 52 Hen. 3, c. 23, § 2 (Eng.) (stating that “[farmers], during their terms, shall not make [waste] . . .”). See also Anthony L.I. Moffa, *Wasting the Planet: What a Storied Doctrine of Property Brings to Bear on Environmental Law and Climate Change*, 27 J. ENVTL. L. & LITIG. 459, 471, 475–76 (2012) (noting that over the centuries “[c]ourts held that, as a matter of law, present interest [real estate] holders were strictly forbidden from specific activities, regardless of their effect on the value of the estate”).

¹⁵Eileen D. Millett, *Green Building for Dummies: What Is LEED Certification?*, 25 PRAC. REAL EST. LAW. 41, 42 (2009) (“Leadership in Energy and Environmental Design (LEED) certification is an example of an integrated approach to sustainable development. . . . [T]he third-party certification process, known as the LEED Green Building Rating System, measures attainment of specific goals designed to promote efficient use of resources, protect health and minimize waste reduce pollution, and environmental degradation.”).

¹⁶Anthony DeLaPaz, *LEED Locally: How Local Governments Can Effectively Mandate Green Building Standards*, 2013 U. ILL. L. REV. 1211; Stephen Accursio Maniscalco, *Copyrightability of LEED Certified Buildings: Approaching the AWCPA to Promote Green Architecture*, 89 ST. JOHN’S L. REV. 1049 (2015).

¹⁷Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Guiding Principles on Business and Hu-*

help prevent billion dollar court judgments against corporations that violate human rights principles.¹⁸ The reach of business law is vast, and law touches virtually every aspect of business operations and decision-making.¹⁹

B. Where Is Business Law?

Given the endless stream of scandals where businesspeople flagrantly disregard legal rules for selfish benefit, one might think business schools would be racing to bolster their legal training to arm their graduates with a healthy respect for and understanding of the law. And yet no such transformation has yet to occur. In 1922, a survey of business schools found that most institutions considered two semesters of legal education to be the minimum necessary instruction.²⁰ Since then there has been an unprecedented increase in legal regulation, complexity, and liability for firms. The number of pages in the *Federal Register* alone, a small corner of the vast reach of law's empire, has increased by 36,600% since 1935 and shows no signs of slowing.²¹

And yet at some of the world's most influential business schools, it is possible that a student can earn an MBA and learn nothing about the vast array of legal rules that govern her decision-making.²² Employers may hire elite MBAs wholly ignorant of how to understand a contract, manage corporate governance, avoid class action lawsuits, interpret environmental regulations, prevent insider trading, interact with administrative agencies, legally hire and fire employees, or navigate the obligations of sprawling legal regimes such as Sarbanes-Oxley, Dodd-Frank, and the Civil Rights Act of 1964. There is no guarantee that a world-class MBA will be able to identify, let alone

man Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, Human Rights Council, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) (by John Ruggie).

¹⁸ See, e.g., *Texaco/Chevron lawsuits (re Ecuador)*, BUS. & HUMAN RIGHTS RES. CTR., <https://business-humanrights.org/en/texacochevron-lawsuits-re-ecuador> (last visited May 18, 2018) (chronicling multi-billion dollar litigation).

¹⁹ GEORGE J. SIEDEL, USING THE LAW FOR COMPETITIVE ADVANTAGE 136 (2002).

²⁰ William E. Britton, *The Teaching of Law in Schools of Business*, 5 AM. L. SCH. REV. 201, 201 (1922) (Although one semester of legal coursework is worthwhile, "the majority of schools are acting upon the assumption that 90 hours of work is the minimum.").

²¹ Clyde Wayne Crews, Jr., *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State*, COMP. ENTERP. INST. 16 (2017) (reporting 95,894 pages in 2016).

²² Constance E. Bagley et al., *Who Let the Lawyers Out?: Reconstructing the Role of the Chief Legal Officer and the Corporate Client in a Globalized World*, 18 U. PA. J. BUS. L. 419, 477 (2016).

manage, legal challenges that could cost her company millions or send her to prison. Ignorance of the law is no excuse, and an oblivious MBA should expect no leniency from a federal court or the Department of Justice when prosecuted for his careless mistakes. A business school should also receive no leniency when its graduate, solemnly certified with a master's in business administration from that institution, makes headlines through carelessness or reckless disregard for the rules that allow free markets to function.

As if this epidemic of legal ignorance were not dire enough, international students, comprising as many as seventy-five percent of enrollees in an MBA program,²³ may fare even worse. MBA students educated abroad can be ignorant to such elementary school basics as how a bill becomes a law, the purpose of the Constitution, and the function of the three branches of American government. There is no guarantee that an MBA from a world-class U.S. business school, tasked with leading a global corporation or managing billions of dollars in hedge funds, will have better legal acumen than an American eighth-grader.

This state of affairs should give any reasonable person pause. What firm would hire someone so legally blind? And yet universities graduate, and Fortune 500 companies hire, these human ticking time bombs with unthinking regularity and generous compensation. With such legal ignorance so prevalent among business school graduates, a regulator could consider a firm's failure to screen its hires for formal training in legal education as evidence of a failed "commitment to compliance with law" required by the U.S. Sentencing Guidelines for an organization to have an "effective ethics and compliance program."²⁴ The message to business education is decades overdue: no rational business school should confer a graduate or undergraduate degree to a student whose sole exposure to and respect for the law comes from watching reruns of *Law and Order*.

The need for robust legal education in business schools is immediate and substantial. This does not necessarily mean, however, that our colleagues and administrators will be immediately persuaded. For the benefit of our students, our students' employers, and society, we must convey the importance of legal education to all of our stakeholders. We do so by advancing

²³Susannah Snider, *10 MBA Programs Where International Students are the Majority*, U.S. NEWS (Aug. 4, 2015), <https://www.usnews.com/education/best-graduate-schools/the-short-list-graduate-school/articles/2015/08/04/10-mba-programs-with-the-highest-percentage-of-international-students>.

²⁴U.S. SENTENCING COMM'N, U.S. SENTENCING GUIDELINES MANUAL § 8B2.1(b)(2)(A) (2017).

the message of business law to those who make or influence decisions in a language or method that our colleagues understand. The message must also echo reasons that our colleagues care about and that are likely to encourage concrete and significant action. No matter what our individual rank, university status, or teaching-research emphasis, we can demonstrate to our stakeholders that legal education matters.

III. MORE AND BETTER MESSAGING

For the good of students, businesses, and society, business law must be an essential part of business education in equal partnership with other disciplines. However, we cannot rely solely on our opinion. Declaring that legal knowledge supports a democratic society, delivers a source of competitive advantage, and keeps our students and alumni out of prison may not resonate with the same immediacy to our colleagues as it does to us. I have met and heard faculty who view business law as little more than an impediment to a free market and openly question the need for any legal education except for lawyers. For some, even lawyers are not spared. One business school professor in the early 1990s claimed that each lawyer, while producing nothing, costs the U.S. economy \$1 million each year in lost productivity arising from lawsuits and other costs.²⁵ This finding was shown to be unsupported,²⁶ but the perception somehow survives that lawyers, and by extension legal knowledge, does not add value to business or society.

Fortunately, most stakeholders are not so openly skeptical. Yet our advocacy of business law expressed in our traditional language may seem as little more than that—advocacy. For lawyers, advocacy is the deployment of logic

²⁵STEPHEN P. MAGEE ET AL., BLACK HOLE TARIFFS AND ENDOGENOUS POLICY THEORY 119 (1989); Glenna Whitley, *Why We Love to Hate Lawyers*, D MAG., May 1991, <https://www.dmagazine.com/publications/d-magazine/1991/may/why-we-love-to-hate-lawyers/> (noting that “[b]y contrast, the average drug addict only costs the US \$200,000 per year”).

²⁶Frank B. Cross, *The First Thing We Do, Let's Kill All the Economists: An Empirical Evaluation of the Effect of Lawyers on the United States Economy and Political System*, 70 TEX. L. REV. 645, 649, 672–83 (1992) (conducting “an independent empirical analysis on the effect of lawyerification on the nation’s economy” and concluding that the “measured negative effects of lawyerification on national welfare are highly uncertain and incomplete” and “flawed by unrealistic theoretical assumptions about the actual activities of United States lawyers”). See also Charles Silver & Frank Cross, *What's Not to Like About Being a Lawyer?*, 109 YALE L.J. 1443, 1469 & n.145 (2000) (“[O]nly rigorous empirical studies can determine whether America has too many lawyers, but the studies conducted to date have not shown this to be so.”).

and advancement of knowledge through rhetoric. For some social scientists, as I have unpleasantly learned firsthand, advocacy is an unpleasant code word for someone who lacks data and thus the legitimate force of persuasion.

When we speak to our stakeholders, we must learn how to codeswitch. Codeswitching is the alternation of languages in a given exchange of communication.²⁷ Frequently used in the context of bilingual studies,²⁸ the concept applies equally to academic discourse. Codeswitching rightly assumes that the written and spoken word are both a shared means of communication and a tool for cognition.²⁹ The means by which we communicate the message are as influential, if not more influential, than the message itself. Codeswitching involves adaptation of that content in order to meet the assumptions and cognitive methods of one's audience. Codeswitching is not about prostituting one's values, but rather framing a message in a way that can be most understood by, and made beneficial to, our stakeholders.

Codeswitching is an imperative because lawyers follow a different epistemology than many of their business colleagues.³⁰ Business disciplines are generally considered social sciences, and share common histories via the study of mathematics, psychology, economics, sociology, and other fields. Finance and accounting faculty, for example, while not de facto experts in one another's fields, share a common methodology that make their mutual scholarship and teaching generally familiar to one another.³¹ Interdisciplinary research across business disciplines appears common and fruitful.³²

²⁷ E.g., Alfredo Mirande, 'Now That I Speak English, No Me Dejan Hablar' [I'm Not Allowed to Speak]: The Implications of *Hernandez v. New York*, 18 CHICANO-LATINO L. REV. 115, 140 (1996) (summarizing various definitions of codeswitching).

²⁸ *Id.*

²⁹ Bruce Bain & Agnes Yu, *Toward a Fuller Appreciation of Codeswitching*, 32 J. PRAGMATICS 1405, 1405 (2000).

³⁰ I am about to make broad statements, and draw broad conclusions, about entire fields of study and their associated methodologies. In doing so, I am painting with a wide brush and readily acknowledge the many exceptions and counterexamples that exist to these general ideas. I also do not intend any implication that one discipline or method is superior to the other.

³¹ See, e.g., BOB RYAN ET AL., RESEARCH METHOD AND METHODOLOGY IN FINANCE AND ACCOUNTING (2d ed. 2002) (instructing on research methods common to the two disciplines).

³² See, e.g., Joseph L.C. Cheng et al., *From the Editors: Advancing Interdisciplinary Research in the Field of International Business: Prospects, Issues and Challenges*, 40 J. INT'L BUS. STUD. 1070 (2009).

The discipline of law, including business law, has a fundamentally different origin. Though the placement of law as a discipline is complex,³³ the origins of law and legal studies have firm foundations in the humanities.³⁴ Law holds kinship with fields such as philosophy, English, theology, and the arts.³⁵ Humanities education does not primarily seek to deduce the world, but questions its civilizations through a search for deeper meaning within texts, creative works, and institutions that shape the human condition. Humanities education is designed to improve critical thinking, increase appreciation for the arts, and build an understanding of how to relate to society and the natural world.³⁶ In short, humanities education searches for deeper meaning in the human experience. In contrast to much of business scholarship, which discovers how things work, legal scholarship questions why things exist. The “separation between the descriptive and the normative, the indicative and the imperative, the ‘is’ and the ‘ought’”³⁷ is what distinguishes legal and ethical education from significant portions of other business education in business schools.

These fundamental differences manifest in varying research methodologies. Business scholarship makes claims in part through the analysis of

³³See generally Dan Priel, *Jurisprudence Between Science and the Humanities*, 4 WASH. U. JURIS. REV. 269 (2012).

³⁴This does not necessarily mean that legal research remains uninfluenced by interdisciplinary methods and, in particular, the social sciences. See, e.g., Jack M. Balkin and Sanford Levinson, *Law and the Humanities: An Uneasy Relationship*, 18 YALE J.L. & HUMAN. 155 (2006).

³⁵See Jeffrey Scheuer, *Critical Thinking and the Liberal Arts*, ACADEME, Nov.–Dec. 2015, at 35, 36.

³⁶Kevin Reilly et al., *Do Humans Still Need to Study the Humanities?*, NEW REPUBLIC (Mar. 17, 2015), <https://newrepublic.com/article/121308/what-purpose-do-humanities-serve> (interviewing four university presidents).

³⁷Rob Atkinson, *Law as Learned Profession: The Forgotten Mission Field of the Professionalism Movement*, 52 S.C. L. REV. 621, 629 (2001). For an thoughtful summary of this distinction, presented broadly between law and science,

Science and law are not enemies. They are man’s servants. But there is a profound and pervasive difference. Science embraces all things material. Law, with its legitimizing moral and ethical philosophies, embraces all things spiritual. Hence science and law are all we have as we strive to become what we have never been before. We need both the slide rule and the golden rule.

Science and technology alone would produce a society ruled by cold, hard, despotic, physical facts without mercy, courage, love, reasonableness, honesty, compassion, or justice—the stuff of the law. Law alone would produce a society of wise men unable to leave their caves.

Howard T. Markey, *The Legal Implications of Risk*, 36 AM. STATISTICIAN 256, 258 (1982).

data vetted by statistical methods. The rigor of these statistical methods drives the perceived quality of the underlying scholarship. When business scholarship does not primarily rely on empirics, it either substantiates its claims through mathematical equations or the construction of testable propositions visualized through a flowchart of influence with mediating and moderating variables. These and other methods represent powerful tools for understanding the fundamental natures and functions of business.

Legal scholarship, by contrast, relies on the application of legal logic and incorporates the various forms of human thought such as rhetoric, reflection, and empathy. Legal scholarship places significant weight on the deconstruction and analysis of text and language. Arguments for justice and equity through advocacy, interpretation, and deconstruction drive much of legal scholarship. Legal scholarship can also analyze policy, assess legal institutions or institutional actors, advance philosophical notions of law, or engage in comparative and historical analyses.³⁸ The goal is not necessarily empirical deduction, but an illumination of the meaning and purpose of humanity and its institutions, to challenge established ideas, encourage novel thinking, and generate wisdom.

Both pathways of knowledge are necessary for an advanced civilization. Yet these differences impose a substantial cognitive load upon anyone wanting to cross the disciplinary divide between business and legal scholarship. Information does not readily pass between different disciplinary languages,³⁹ and knowledge can be undervalued because of the cognitive load required to incorporate it.⁴⁰ Business scholarship can appear to the law faculty like an impenetrable wall of tables and numbers. Legal scholarship can appear to

³⁸For a useful survey of the various forms of legal scholarship, see Martha Minow, *Archetypical Legal Scholarship: A Field Guide*, 63 J. LEGAL EDUC. 65 (2013).

³⁹*Cf.* Stefan Volk et al., Brain Drain: The Cognitive Neuroscience of Foreign Language Processing in Multinational Corporations, 45 J. INT'L BUS. STUD. 862, 862 (2014) (concluding that "foreign language processing depletes cognitive resources, which can ultimately result in biased decisionmaking and reduced self-regulation").

⁴⁰Timothy Fort, Eveleigh Professor of Business Ethics at Indiana University and holder of terminal degrees in both law and business, shared this example:

I was on the editorial board for the Academy of Management Review for several years. Time and again, I read manuscripts that simply had no idea what the law was. For example, one article said that the only reason that companies had developed compliance programs was solely because of an opportunity to create a better strategic marketing profile. The author had not heard of the Federal Sentencing Guidelines. I had to conclude that many simply didn't have a sense of the impact of the law on management.

the business faculty like a labyrinth of incomprehensible rules and verbiage. Whereas marketing, finance, and other siblings in business speak similar languages and can communicate basic ideas between one another, legal and business scholarship remain distant disciplinary cousins. This communication gap can be problematic because through a shared language, and a resulting scholarly engagement, there inevitably comes a shared understanding and appreciation for the work of one another. It is too easy to discount what we do not understand. Being a minority group of humanists amongst a majority of social scientists, business law scholarship too often receives the blunt end of that discounting.

Reasons in support of a vibrant legal studies discipline within a school of business must be evidence based whenever possible. Inspiring words about law as the cradle of justice and equity in business may fall on deaf ears or at least be discounted because of the absence of data. We must speak their language, the language of objectivity, empiricism, induction, and deduction. Facts backed by data, analyzed by accepted qualitative and quantitative methods, are more likely to change thinking about business law in business schools. We must acquire this data and apply these methods to essential questions facing the discipline. For example, why should business law be a core course in an undergraduate or graduate business program? How does coursework in business law improve critical thinking? Do legally educated students behave more ethically? How do legally educated students improve their employment prospects? What is business law's unique value proposition to business schools and corporations? While a promising literature exists that addresses these and similar subjects,⁴¹ we must have more evidence-based answers to these and other fundamental questions.

We must also evolve our pedagogy by advancing new teachable subject areas that convey essential legal knowledge to our students in a fashion

Email from Timothy Fort, Eveleigh Professor of Business Ethics at Indiana University, to author (Oct. 10, 2017: 15:01 EST) (on file with author). A similar criticism, of course, can be just as easily levied against legal scholars like ourselves. Suzanna Sherry, *Law Professor as Schizophrenic*, 3 GREEN BAG 2D 273, 273 (2000) ("Law professors as a group are too arrogant, too disdainful of empirical information in favor of grand abstractions, and appallingly willing to write in disciplines of which they are woefully ignorant.").

⁴¹ E.g., Alison McCourt et al., *Business Law in the Accounting Curriculum: An Exploratory Study*, 11 J. BUS. EDUC. & SCHOLARSHIP OF TEACHING 1, 17 (2017) (finding via semistructured interviews that "the study of business law is crucial to accounting students, with the majority identifying the role of accountants as businesspeople and advisors to businesspeople as key reasons for this importance").

that our internal and external stakeholders can readily appreciate. For example, legal risk management perceives legal knowledge through the lens of the risks that a firm faces in its external environment. Viewing legal knowledge through the lens of risk management frames such legal knowledge as a proactive managerial tool instead of a purely reactive measure. Whereas laws and statutes feel foreign, risks and returns are understandable and manageable concepts to those with business training. Layering risk management concepts on established subjects in business law codeswitches legal concepts from the unfamiliar to the familiar. This in turn reduces the cognitive load for stakeholders to value business law and builds cross-disciplinary rapport.

Legal strategy is also a subject matter worth integrating into the curriculum.⁴² Legal strategy posits that legal knowledge and resources can be applied to capture a competitive advantage for the enterprise.⁴³ Also known as proactive law in Europe,⁴⁴ legal strategy aligns legal practitioners with the value creators of the enterprise. Like legal risk management, a legal strategy view harmonizes with other disciplines that focus on generating value for the firm. Lawyers and legal experts are not merely value protectors, but rather value creators who can generate value for the enterprise and help keep firms ahead of rivals. With the goal of growing firm value fundamental to most business disciplines, framing legal knowledge as a source of value creation will build mutual understanding and respect across fields.

Perhaps the subject with the greatest potential for interdisciplinary codeswitching is corporate compliance. Businesses are experiencing a “hiring spree” for talented compliance professionals.⁴⁵ Regulators are becoming increasingly aggressive toward companies that fail to meet regulatory standards. Headlines are flooded with issues related to compliance, and now members

⁴² See, e.g., Ross D. Petty & Richard P. Mandel, *Putting Business into Business Law: The Integration of Law and Business Strategy*, 10 J. LEGAL STUD. EDUC. 205 (1992).

⁴³ See, e.g., GEORGE J. SIEDEL, THE THREE PILLAR MODEL FOR BUSINESS DECISIONS: STRATEGY, LAW & ETHICS (2016); Robert C. Bird & David Orozco, *Finding the Right Corporate Legal Strategy*, 56 SLOAN MGMT. REV. 81 (2014); Constance E. Bagley, *Winning Legally: The Value of Legal Astuteness*, 33 ACAD. MGMT. REV. 378 (2008); Robert C. Bird, *Pathways of Legal Strategy*, 14 STAN. J.L. BUS. & FIN. 1 (2008).

⁴⁴ George J. Siedel & Helena Haapio, *Using Proactive Law for Competitive Advantage*, 47 AM. BUS. L.J. 641 (2010).

⁴⁵ Gregory J. Millman & Samuel Rubenfeld, *Compliance Officer: Dream Career? As Fines Sting, a Hiring Spree for Risk and Compliance Staff*, WALL ST. J. (Jan. 15, 2014, 8:13 PM), <http://online.wsj.com/articles/SB10001424052702303330204579250722114538750>.

of boards of directors are subject to a duty to monitor the compliance of the enterprise.⁴⁶ If corporate compliance becomes important to boards of directors and other elite executives, and the subject is a constant topic in the media, in time the subject will reach deans and administrators who must aggressively engage with business to keep their business schools competitive.

What makes corporate compliance so potentially valuable for the discipline is that the compliance function is fundamentally regulatory in nature. Underlying most corporate compliance are statutes, regulations, and court cases that set the standard to which firms must conform. Human resources compliance already requires navigation of a labyrinth of state and federal rules related to virtually any term and condition of employment. Environmental regulations require a firm to hire compliance staff to ensure no violations. Securities regulations require compliance teams to prevent inadvertent insider trading by employees. All of these compliance disciplines, and the myriad of others, are tightly bound to the rule of law and its obligations. A compliance perspective has the potential to emerge as the fundamental reframing the discipline needs in order to remain vibrant in the years to come.

We must be able to justify our discipline through every step of the education value chain, from student recruitment, to classroom experience, to graduation, and on to job placement and employer expectations. We must also be able to discard any white elephants in our curriculum, no matter how beloved, when their usefulness to our students and business has passed.

IV. ENGAGEMENT WITH SOCIETY

In order to advance our discipline, we must speak to a broad audience. The market endlessly presents examples of corporate misconduct. Uber's notoriety for recklessly wading into uncharted legal waters with costly consequences serves as a warning sign for firms that fail to hire employees with a healthy respect for and understanding of the law.⁴⁷ When such events appear

⁴⁶*In re Caremark Inter'l Inc. Derivative Litig.*, 698 A.2d 959, 971 (Del. Ch. 1996) (finding that a "sustained or systematic failure of the board to exercise oversight" would raise questions of liability); *Stone v. Ritter*, 911 A.2d 362 (Del. 2006) (confirming and clarifying the *Caremark* standard).

⁴⁷Benjamin Edelman, *Uber Can't Be Fixed—It's Time for Regulators to Shut It Down*, Harv. Bus. Rev. (June 21, 2017), <https://hbr.org/2017/06/uber-cant-be-fixed-its-time-for-regulators-to-shut-it-down>.

in the media, and their shelf life in the digital age will be surprisingly short, our work and its relevance should promptly follow.

Robert Prentice's thoughtful 2002 op-ed in the *New York Times* typifies the sort of outreach our discipline requires.⁴⁸ Titled "An Ethics Lesson for Business Schools," Prentice skillfully ties the importance of legal education to ethical conduct and to corporate scandals that dominated the headlines.⁴⁹ In emphasizing the importance of legal education, Prentice explained,

The scandals at Enron, WorldCom and ImClone did not occur because executives were not conversant with the difference between teleological and deontological approaches to resolving ethical questions. It goes without saying that these scandals involved serious ethical lapses. But they also involved serious violations of business laws. They occurred, at least in part, because their participants had an insufficient knowledge of, appreciation for and, yes, fear of the law. Business schools have played a role in this disaster.⁵⁰

Today's online environment offers numerous sources from which to raise awareness about the discipline. Curated outlets such as The Conversation provide a forum for disseminating work from the academic and research community directly to the public and then disseminated by the media.⁵¹ Academy members Scott Shackelford, Lynda Oswald, Dan Cahoy, and others have used The Conversation to disseminate research.⁵² I hope others follow in their footsteps and use similar outlets to disseminate the important role of law in business.

Engagement can also be accomplished by reaching key stakeholders. Walking into your dean's office and lecturing her about the wonders of the

⁴⁸Robert Prentice, *An Ethics Lesson for Business Schools*, N.Y. TIMES (May 18, 2018), <http://www.nytimes.com/2002/08/20/opinion/an-ethics-lesson-for-business-schools.html>.

⁴⁹*Id.*

⁵⁰*Id.* See also Edward L. Queen, *Business Schools Breed Unethical Businessmen*, NEW REPUBLIC (Sept. 28, 2015), <https://newrepublic.com/article/122940/business-schools-breed-unethical-businessmen> (stating that "not only do [business students] make bad ethical decisions, but they actually are incapable of identifying an ethical situation when they are presented with one").

⁵¹See THE CONVERSATION, <https://theconversation.com> (last visited Oct. 28, 2017).

⁵²Scott Shackelford, *How Companies Can Stay Ahead of the Cybersecurity Curve*, THE CONVERSATION (Mar. 20, 2017), <https://theconversation.com/how-companies-can-stay-ahead-of-the-cybersecurity-curve-74414>; Lynda Oswald & Dan Cahoy, *What Do Cheerleader Uniforms and Smartphones Have in Common?*, THE CONVERSATION (Oct. 30, 2016), <https://theconversation.com/what-do-cheerleader-uniforms-and-smartphones-have-in-common-67500>.

discipline will not likely accomplish much other than annoying her. Instead, we can be most effective by reaching faculty and administrators through external venues at which they are most receptive to new ideas. For example, a group of business law faculty delivered a panel on law and stakeholder engagement at the 2017 annual conference of the Academy of Management.⁵³ Feedback from the event was positive, and it serves as an intriguing template for other groups of business law faculty to follow for interdisciplinary engagement.

The potential also exists to engage companies, industry associations, and other university disciplines to see how business law can help the stakeholders attain their goals. The more we know about employer's legal needs and concerns, the more effectively they can be addressed in the classroom. We may also find common cause with allied organizations such as the Society for Business Ethics (SBE). SBE and the Academy of Legal Studies in Business have met concurrently in the past, resulting in joint panels and cross-collaboration.⁵⁴ While a similar future event may not be likely,⁵⁵ our interests and goals remain substantially in common, and further engagement would be fruitful to both disciplines. Interaction with the French Academy of Legal Studies in Business,⁵⁶ the United Kingdom's Association of Law Teachers,⁵⁷ and a promising emergence of a business law professoriate in India,⁵⁸ should also be opportunities for closer collaboration.

Business law faculty must also make the case directly to our final constituents—the students who we teach and the employers that hire them. Survey evidence has shown the importance that executives place in having

⁵³See Adam J. Sulkowski et al., *Law, Management, and Strategy: Collapsing Boundaries and Managing the Interstices* (2016), <https://ssrn.com/abstract=3022313>.

⁵⁴*Note from the Editor*, 5 SOC'Y BUS. ETHICS NEWSLETTER 1 (1994), https://www.pdcnet.org/pdc/bvdb.nsf/purchase?openform&fp=sbenews&id=sbenews_1994_0005_0001_0001_0001.

⁵⁵The Society for Business Ethics annual conference appears to follow the dates set by the much larger annual conference hosted by the Academy of Management. These conferences often conflict with the annual conference hosted by the Academy of Legal Studies in Business.

⁵⁶FRENCH ACADEMY OF LEGAL STUDIES IN BUSINESS (ASSOCIATION FRANÇAISE DROIT ET MANAGEMENT), <http://www.afdm-droit.com/> (last visited May 18, 2018).

⁵⁷ASSOCIATION OF LAW TEACHERS, <http://www.lawteacher.ac.uk/> (last visited May 18, 2018).

⁵⁸R. Rajesh Babu, *Law and Business: Comparative Perspectives*, in *MANAGEMENT EDUCATION IN INDIA: PERSPECTIVES AND PRACTICES* 159, 178 (Manish Thakur & R. Rajesh Babu eds., 2017) (surveying business law and concluding that "[i]t is therefore high time that we reimagine the law as a vital part of business education").

knowledge of the law.⁵⁹ Employers are interested in hiring graduates with critical thinking skills, ethical judgment, and the ability to solve complex problems.⁶⁰ These are skills intrinsic to the business law curriculum, and it should be better known by employers. Furthermore, faculty can engage with industry through the development of academic certificates, conferences, and programs that benefit firms and leverage knowledge in business.⁶¹ Faculty may also speak to industry by publishing in venues typically read by business leaders such as the *Harvard Business Review*, *Sloan Management Review*, and the *California Management Review*. Engaged scholarship about the importance of legal knowledge in business raises awareness of business law education and builds demand from business for greater legal knowledge in its graduates.

Some of the most challenging and important stakeholders to reach are deans and administrators who have primary stewardship over schools of business. While evidence-based advocacy within one's own institution is useful, reaching administrators as a broader audience can have a meaningful disciplinary impact. For example, Janine Hiller and I presented at a Southern Business Administration Association annual conference, an association primarily attended by deans and associate deans in the southern United States.⁶² Our primary focus was not to advocate for a discipline, but rather to share useful knowledge about business law to administrators that could be applied at their institutions.

⁵⁹George J. Siedel, *Business School Learning Goals: The Legal and Regulatory Context of Organizations in a Global Economy*, 34 J. LEGAL STUD. EDUC. 325, 332–33 (2017) (citing various surveys highlighting the importance of legal knowledge to business and industry); George J. Siedel III, *An Executive Appraisal of the Importance of Business Law*, 22 AM. BUS. L.J. 249, 260–62 (1984) (reporting surveys of executives with numerous findings including the field of law rising in importance to managers and finding that “executives without law degrees are devoting a major portion of their time to law”).

⁶⁰*It Takes More than a Major: Employer Priorities for College Learning and Student Success*, ASS'N OF AMERICAN COLLEGES & UNIVERSITIES (2013), https://www.aacu.org/sites/default/files/files/LEAP/2013_EmployerSurvey.pdf.

⁶¹The Certificate in Corporate and Regulatory Compliance at the University of Connecticut, which is taught by a combination of law school and business law faculty, serves as an example. UNIVERSITY OF CONNECTICUT, CERTIFICATE IN CORPORATE AND REGULATORY COMPLIANCE, <http://businesslaw.business.uconn.edu/graduate/certificate/> (last visited May 18, 2018).

⁶²See SOUTHERN BUSINESS ADMINISTRATION ASSOCIATION, <http://southernbusinessdeans.org/> (last visited May 18, 2018).

What made our presentation most compelling is that we showed how legal and ethical issues were fundamental to shaping a novel paradigm—the gig economy. At the time, the gig economy, a labor market dominated by short-term work rather than stable employment, was in the public consciousness with important implications for public policy.⁶³ Educating our audience about the gig economy through the lens of business law showed how our field could be applied to novel business trends in new and interesting ways. Our presentation was well received. At least one dean informed us that we influenced his thinking on the hiring of a new faculty member in business law. We were also able to post a blog on the Association to Advance Collegiate Schools of Business (AACSB) website, further promoting our work.⁶⁴

Engagement with the AACSB can be more than the occasional blog post. In 2017, AACSB revised its accreditation standards to reflect its goal of continuous improvement.⁶⁵ These revisions include “changes in business practices, professional standards, or public policy” as evidence of academic impact.⁶⁶ Influencing public policy is squarely within the realm of legal research, and an area where business law can offer a unique impact proposition.

The legal challenge of the gig economy is merely an example of how law will play a similar role in future innovations. Legal knowledge is even more important now than it was in the past due to rapid changes driven by technology, globalization, and disruption. The ways that firms and stakeholders interact with one another are evolving at a similar speed. The law is the key construct that identifies conflicts between firms and its environment, and how those disagreements are resolved. Firms need to be able to understand both the causes and effects of interstakeholder conflicts as well as how to appropriately respond. The disciplines of law and ethics work together to manage these conflicts, and both reduce the risks costs of the firm and improve its engagement with society.

⁶³ See, e.g., Valerio De Stefano, *The Rise of the “Just-in-Time Workforce”: On-Demand Work, Crowdwork, and Labor Protection in the “Gig-Economy,”* 37 COMP. LAB. L. & POL’Y J. 471 (2016).

⁶⁴ Robert Bird & Janine Hiller, *Rediscovering the Power of Law in Business Education*, AACSB BLOG (Feb. 23, 2016), <http://www.aacsb.edu/blog/2016/february/rediscovering-the-power-of-law-in-business-education>.

⁶⁵ *Accreditation Standards: 2013 Standards and 2017 Standards Update (Effective January 1, 2018)*, AACSB, <http://www.aacsb.edu/accreditation/standards>.

⁶⁶ AACSB INT’L, ELIGIBILITY PROCEDURES AND ACCREDITATION STANDARDS FOR BUSINESS ACCREDITATION 52 (2017), <http://www.aacsb.edu/accreditation/standards>. See also *id.* at 20.

V. CONCLUSIONS

Law remains the last great source of untapped competitive advantage.⁶⁷ Law also remains an extraordinarily important source of values-driven management that is closely twined with the study of business ethics and the advancement of ethical values in the organization. With scandal after scandal filling the business headlines, and the unsettling lack of robust legal education in business schools, we have a critical mission to advance the importance of law in business.

The medium is as important as the message. Well-crafted oratory about the importance of justice will accomplish little with stakeholders who live and breathe in empirics, theory, and deduction. We must learn how to codeswitch and practice it as enthusiastically as we teach our students. Risk management, law and strategy, and especially compliance are promising opportunities. Practical advice and points of action must remain salient to our diverse audiences.

I conclude with a message from Phil Nichols, President of the Academy of Legal Studies in Business, in the 2017 conference program. Phil captures quite well the state of our academy today.

Our academy is awesome, and therefore also risks becoming obsolete. Because we excel at doing things now, we risk not paying attention to the future. The way that people connect to ideas is rapidly changing, and we must change with it. The way that schools operate is changing, and we must therefore change how we serve our members. Change does not mean diminished quality; our role is still to contemplate and to think critically. Our academy should lead the way in transforming the challenges created by change into opportunities for all of our members.⁶⁸

Phil is right, our academy is awesome but with challenges ahead. We are most successful at the individual level, as we provide research and support to our fellow business law faculty, especially junior faculty and faculty who work alone in their schools of business. We are also successful at the disciplinary level, presenting research and advocacy on the importance of law in business and business education at most of our meetings, and these articles often find a welcome home in our academy's regional and international journals.

⁶⁷Larry Downes, *First, Empower All the Lawyers*, HARV. BUS. REV., Dec. 2004, 19, 19.

⁶⁸Philip M. Nichols, *Welcome Message from Your President*, ALSB CONFERENCE PROGRAM 1, 6 (2017).

Where we need to be more successful is engaging with stakeholders outside the discipline and in business.⁶⁹ We owe it to ourselves, to our junior faculty, and to future generations of teachers to act. We must never abandon our commitments to the humanistic principles of liberty, justice, and equal opportunity, but rather advance those principles through the lens and languages of those stakeholders most important to us—whether they be a colleague, a promotion and tenure committee, the dean, or the AACSB.

Law is too important to be left to the lawyers.⁷⁰ Respect for law is one of the last lines of defense against an amoral civilization. Law is one of the intellectual foundations for civilization, its freedoms, and its values.⁷¹ Improved social welfare cannot be separated from the technical methods by which law achieves its goals.⁷²

Business law is the canary in the coal mine of values-driven business education. Our song is justice, fairness, and equity for a better world. For our sake and for the sake of society, let us ensure that our melody never goes silent.

⁶⁹Other academic fields of study have grown from fringe to mainstream in a relatively short time, and their methods should offer valuable lessons for business law. See Donald C. Hambrick & Ming-Jer Chen, *New Academic Fields as Admittance-Seeking Social Movements: The Case of Strategic Management*, 33 ACAD. MGMT. REV. 32 (2008) (theorizing the successful rise of strategic management as a field in management).

⁷⁰Bagley et al., *supra* note 22, at 506 (“Law, ethics, and compliance are just too important to be left to the lawyers, so managers must be legally astute and insist on lawyers who are strategically astute. Unfortunately, many managers leave business school ill-equipped to manage the legal and ethical aspects of business.”).

⁷¹Marianne Constable, *On Not Leaving Law to the Lawyers*, in LAW AND THE LIBERAL ARTS 69 (Austin Sarat ed., 2004).

⁷²HAROLD J. BERMAN, ON THE TEACHING OF LAW IN THE LIBERAL ARTS CURRICULUM 30 (1956).