

EDUCATION FOR BUSINESS AND ITS LEGAL ENVIRONMENT

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Most of us agree that education for business and its legal environment should provide a knowledge of the legal framework within which business operates, an appreciation of our legal institutions, and an understanding of the role of law in our society.

As in all things, it is easy to agree on generalities. It is hard to agree on specifics. Take the case of a course like business law in present collegiate curricula. Some critics of present-day education for business have hailed business law into their courts of judgment on varied indictments.

They charge business law with being a tool course. They brand it with the stigma of disseminating knowledge about the law, and of neglecting the environmental role of the law. They call the course in business law backward and behind the times because they feel it does not show how the present evolved out of the past and how the present is evolving into the future.

All is not lost, however. The detractors of business law are kind and generous at heart. Knowing a vacuum may be created if business law is "put away," they suggest a replacement. They will call it "The Legal Framework of Business." They come up even with the novel suggestion that such a course could be taught with cases and situations concerned with business. And, to cap it all, they blossom forth with the brilliant idea that the person to teach the kind of a course our students should have is a teacher with a background in law, a background in political science, and a background in the problems of business organization and management.

Under the skilled manipulations of this paragon, the critics assure us that law would not then be taught in the narrow sense of how to beat the antitrust laws, but in a broader sense. Unfortunately, for their case, they do not provide any evidence that courses in Business Law are now being taught as techniques in how to beat the antitrust laws.

As an afterthought, one critic adds an aside, albeit in a somewhat pessimistic vein. Almost in an off-the-record remark, he implies that his hope for the demise of business law may founder on the reef of present business law teachers. He sees these business law teachers, like doting parents, fighting to save their brain child, the course in business law. He sees the blackout of the course deferred because of the problem arising in connection with the layoff of business law teachers. So grooved in their academic rut have they become that there is nothing else they can teach or

do. The specter of their unemployment rears its ugly head, not from technological unemployment, but from the encrustations and rigidities of the mind induced by the teaching of such a narrow, tool-type course.

So much for the indictment. So much for the presentation by the prosecution. Now a look at the abject defendant, business law—senile, shaking, cowering under the indignities heaped upon his haggard self. Must he not be overwhelmed at this stage, ready and willing to throw in the sponge, and yield his place, if not to the New Frontier, at least to the New Look in Education?

Bleak and dour and old, the defendant rises to his feet, and in the shrill and cackling voice of the seventh age of man, garbled with slipping dentures, he says: "You accuse me of being a tool course. Under the law—and you should know the law, you all-knowledgeable ones—the accusation must be clear, specific, detailed, and meaningful. Otherwise, how am I to know with what I am charged? Must I surmise? If, by a tool course, you mean one that provides the tool of desirable knowledge—then, to this charge, I happily admit my guilt. If, on the other hand, by a tool course, you mean one that is narrow, picayunish, concerned with the trivia of technical details, so digging in the earth like a mole as to be oblivious of the sun of principle, then this charge I throw back into your teeth.

"Naturally, I cannot tell you how every course in business law is taught. Neither can you, however, and, parenthetically, I cannot help but wonder how many classes in business law you have actually attended. I can, however, cite you the academic and philosophic base for courses in business law from the texts from which they are taught. Here is what they say:

'The purpose of the course is to give an understanding of the basic principles of law. As a member of society and as a responsible citizen, the business graduate should understand the basic principles of law that govern our economic activities.

'The picture is to give the student of business a composite picture of what the law is, not how it differs.

'The purpose is to give a clear exposition of legal principles and the underlying reasons for such principles.

'The objective is to cover the fundamental principles of law which relate to the most common business transactions.

'The goal is to present fundamental principles, correlated with a selection of cases, that will demonstrate how these principles apply to concrete cases.'

If you, the prosecution, will grant that most teachers are devout and sincere, then you must concede that they would try to teach business law in line with these broad principles. If this is true, then it must follow as the night the day, that the course in Business Law is basically dedicated to the exposition of broad principles, rather than in the quagmire of narrow details. If this is true, then the charge of being a tool course in the small and trivial sense must evaporate in the fog of its own musty misconception.

"The second count in my indictment is that I give undue attention to the knowledge of the law, and that I disregard the environmental role of the law. Why the dissemination of knowledge should be a sin is beyond me. But let that pass.

"What, I ask you, do you mean by the environmental role of the law? Do you

mean the law as it crops up in the situations with which business daily encounters? These are the situations forming the cases to which my students apply their knowledge of principles. By the environmental role of the law, do you mean law as it surrounds the making of contracts, the creation of corporations, the restraints as well as the liberties permitted the corporate entity, the protections to society inherent in the laws to promote competition? If this is what you mean, then this is what I teach in the divisions of business law known as contracts, agency, corporations, property, sales, and administrative tribunals. In fact, Mr. Prosecutor, give me any instance of the environmental role of the law, and I will match this instance with the subject matter now incorporated in my course.

"You next picture me as a pitiable illustration of the fact that educational practices are slow to change. You do so on the ground that the same kind of business law is being taught today that has been taught, lo these many moons, years, and decades past. The world has gone forward, you imply. Business law has stood still. First, may I ask why you insist on change. In other academic areas, basic subject matter still persists—Shakespeare is still Shakespeare, history is still history—this, no one can deny. And so it is with business law. The common law is still the common law, the law merchant is still the law merchant, the Constitution is still the Constitution.

"Presumably, therefore, it is not the content of Business Law to which you so much object. Rather, you apparently have some vague abhorrence for the way it is taught. You imply that the course in Business Law fails to take into account that this is the age of the large firm, of a growing emphasis on administration, and on a specific approach to management problems. Wherein is Business Law inconsistent with these premises? It treats of the large firm in its study of Corporation Law. It concerns itself with administration in its interpretation of the basic principles by which administrative tribunals are guided. It adopts the scientific approach in its analysis of cases.

"You accuse me of failing to show how the present evolved out of the past and is in turn evolving into the future. If you, Mr. Prosecutor, had ever taken a course in Business Law, you would not be guilty of expressing such a glaring untruth. I teach how the English common law evolved into the law of today. I teach how the law merchant evolved into the law of negotiable instruments. I show the trends evident in jurisprudence today foreshadowing an intensification of social and legal controls in the legal environment of tomorrow.

"In view of my many sins, you would relegate me to the limbo of things happily forgotten. Yet, just as nature cannot live in a vacuum, neither can the student. And so you are so kind as to suggest a successor to take my place. You therefore come up with the brilliant and illuminating concept of a course on the legal framework of business. May I ask you this, Mr. Prosecutor, would such a course concern itself with the sacredness of contractual commitments, that a man's word is his bond? Would it show why in this complex and corporate world of ours it is essential to act through the agency of others? Would it point out why basic laws have been set up to protect the public? If it would carry out these desirable objectives, then it would be doing just what I have been doing in contracts, agency, and corporations. Oh, of course, it would have a different name, and I grant you it

is most desirable in the name of educational reform to espouse a new nomenclature to provide that new, fresh look—the new broom having swept clean. But then, unfortunately for you, Mr. Prosecutor, your educational crusade would have come full circle, for your course in substance would be right where business law is now.

“In another flash of educational insight, Mr. Prosecutor, you say that your type of course could be taught with cases and other materials concerned with business. Are you aware, Mr. Prosecutor, of the two or three pages appended to every chapter in present business law texts? Have you read the fine print? Have you taken note of the legal annotations? If you have not, then may I tell you these are cases concerned with business situations?

“Being a member of the educational fraternity yourself, Mr. Prosecutor, you delicately refrain from putting the curse on business law teachers. But you do imply they are not all they should be. You imply this when you spring forth with your job description for your paragon to teach your course in the legal framework of business. You say he should have a background in law and political science. Are you aware of the fact that a large percentage of present teachers of business law have such a background? You likewise suggest he should have a background in the problems of business organization and management. But what is every case he teaches if not a business problem? What is the area of labor law, of the law of agency, or of corporation law, if not an area of problems in business management?

“But the crowning blow, the unkindest cut of all, by which you doom me, Mr. Prosecutor, is the implication of your closing remarks. Much as you hope for my demise, I evidently have too many nephews and nieces, too many sons and daughters, dependent on me for their continued existence. Who are they? They are the present teachers of business law, a poor, benighted lot, so set in the groove of narrow pedagogy that they can teach nothing else. Hence, the hue and cry they raise so tears the hearts of soft educational administrators that they cannot dismiss them. As the only thing they can teach is this silly course in business law, then with this we must carry on until attrition, retirement, and old age take their toll and the business law practitioner passes on—‘unknelled, uncoffined, and unknown’.”

Having disposed of business law—alas, poor Yorick, we knew him well—the critics go merrily on their way, new scalps to cut and conquer. And, in their next raid on our confines, they come up with what they consider prime evidence of our misdeeds. Like the rabbit, we proliferate. Like the rabbit, we repeat ourselves in other educational patterns. Aha, they cry! In your courses in marketing, you are again teaching the law of sales; in real estate, the law of deeds and conveyances; in industrial relations, labor law; in finance, the law of negotiable instruments; in management, the law of corporations and agency, sole proprietorship and partnership; in insurance, the law of contracts. Proliferation, repetition, titillation, playing academic roulette with your students’ time and money, saying the same things about the law, but with different course titles. The evidence is there for all to see. The critics can cite page so-and-so and chapter so-and-so of text so-and-so in proof of their charges that these courses too concern themselves with law. But—so what? In the area of social sciences inevitably the force of social control must arise, and how else but in the form of law? It is certainly no new academic experience to find

subject matter in one course also securing lodgment in another. Knowledge is not compartmentalized and departmentalized into neat little layers, segmented, broken up, each in splendid isolation. A course in English literature inspires a love of Shakespeare. A course in Shakespeare as such inspires an even deeper love. A course in mathematics teaches mathematical principles. A course in Physics applies them. And so it is with courses in business and in economics. Taught well, they integrate knowledge, they do not disintegrate it. Taught well, they show the picture whole, not in parts. They build and they synthesize in their building. In this, there is no crime of proliferation. Rather, there is the virtue of looking at knowledge close at hand, with all the roots and ramifications making it what it is, as well as the virtue of looking at knowledge through the telescopic lens, and getting the broader, over-all perspective.

Also courses such as marketing bring out the important by-product of concern with the problems of declining industries. These have accounted for the payrolls and the economic lives of their communities. What can the legal environment of business do to make good their lack? Here the student can learn about the help community planning and civic promotion of successor economic activities can provide.

Also, in his course in money and banking the student comes to comprehend the dangers of inflation and the peril to the economy in tinkering with the monetary system. He develops an intelligent evaluation of legislative proposals of a monetary character.

In these and in other business courses, the student develops a constructively critical approach to both proposed and present legislation. When the government moves to block contemplated mergers, he asks himself why such mergers are suspect as a conspiracy in restraint of trade. When the government seems to favor such mergers, he asks himself why the seeming inconsistency. Why, for example, should the Civil Aeronautics Board be nudging airlines into mergers when they themselves are disinclined to become marriage partners? Why should the Federal Power Commission assume the marketing role of reducing natural gas rates it thinks too high, even though there is no consumer complaint to this effect? Under what authorization does the Federal Government proceed in pressuring business to establish wage and price policies it sets up?

Are you then but a defender of the status quo, the critics cry, smug in your complacency, singing piously that "God's in his heaven—all's right with the educational world?" Are you like the ostrich, sticking its neck in the sand, oblivious to the winds of change, blindly chirping that present curricula in business education are adequate preparation for business and its legal environment? A thousand times "No"! The student needs history so as to understand the evolution of the law. He needs political science so as to comprehend the structure of government. He needs such courses as Government and Business and such schools as those in Public Administration to show the complex interrelationships so all-pervasive between commercial and political activity. He needs comparative government—a knowledge of the legal systems of other countries, of the ways in which the approaches to monopolies and combinations differ abroad, of the financial partnership with private enter-

prise on the part of the government in countries overseas, of the ways by which pressure groups make themselves felt both here and in other jurisdictions, of differing attitudes toward personal and property rights elsewhere.

With a knowledge of this kind, the American businessman will be better able to adapt himself to his legal environment in the international sphere. His company may have large investment stakes in other lands. In preserving and enhancing these stakes, he is subject to different rules of the game from those at home. In many areas he lives under the constant threat of nationalization. In enforcing his property rights he follows different procedures. If he can only appreciate and understand the legal systems of these other countries, then he also can better understand their hopes and aspirations, their cultures and their traditions, their needs and their desires.

In weighing the risks of foreign investment, he will be asking himself questions present legal and social systems raise: Can apartheid hang on indefinitely in the new Republic of South Africa? Will colonialism in Angola and Mozambique withstand the winds of change blowing down from the north? Why was the transition from colonial status to independent status relatively smooth and easy in India? What is there about the legal systems of New Zealand and Australia that accounts for their political stability? How long can the dictatorships in Spain and in Portugal endure? Is there some dynamic attribute in Soviet Socialism that has enabled it to harness and accelerate so much productive energy in so short a time? Is the so-called welfare state in the Scandinavian countries imposing a clammy hand of bureaucracy on private enterprise?

The important thing is that our students raise questions such as these in their studies of business and its legal environment both here and in countries abroad. The end result should be a transformation of the ugly American into the knowledgeable American—replacing an isolationist point of view by one which looks beyond the horizons and feels the heart beat across the seas.

Are there any areas in education for business and its legal environment where we could do more, where we could do better? Indeed there are. All areas. May I dwell on two for a moment. One is scholarship and research. The other is ethics. On the boundaries of every branch of learning is a borderland, not clearly apportioned, the province claimed by the scholar. In its tangled details, formless and meaningless in themselves, the scholar in the area of legal systems discovers the connecting idea, the nexus holding and controlling it all as an organism. To the student of business and its legal environment, law is not a rigid scheme of acts and statutes. He knows that the people of every age infuse meanings into the laws they establish; that every change in their manner of living and thinking may give a modified value to their scheme of law. The student of business and its legal environment comes into contact with the great legal personalities of the past. He senses the formative stimuli that emanated from them. We all draw close to those we admire. We all become like those we love. And so it is with the legal scholar.

It is the scholar in the legal environment of business who provides the reintegration of the political man, the rational man, the biological man, and the economic man. He withdraws from the ebb and the flow of the law. He pauses. He stands outside the flux and judges the laws of men objectively. He lifts himself out of the turmoil to a plane where personal considerations drop away. And he then

culls out the essence of the law. As he does so, he reaches a new satisfaction, one that does not flow from mere analytic experience. Something over and above reaches him, for the reason that the law in its wholeness, like an organic unit, is worth more than the sum of its parts. As students of business and its legal environment, it is essential to realize the vastness of the law, to comprehend the legal experience of man in the long, changing centuries, and not to affirm or deny dogmatically on the thought of the hour. Every legal system has been modern to the men who made it, and that which seems to us absolute may be but a partial phase in a changing process of juridical thought. Education for business and its legal environment must keep open to truth, in the certainty that there is a deep below our last sounding, and a height from which our petty lookout over the legal systems of today will be lost on the level plain of tomorrow.

In our students of business and its legal environment, we have an obligation to develop eager, searching minds, exploring new possibilities. In what we say and do we can inspire them with the conviction that laws in themselves do not make right. Rather, it is the character and the ethics of the people within the legal system that do. With certain basic precepts, we can instill these truths. There is no greatness apart from simple honesty. The world admires specialized ability, but in the long run it remembers and honors only men it can trust. If friend and foe find in us a basic honesty, this compels their admiration. When we make promises, we must keep them, regardless of the cost. When we make demands on our associates, we must enforce them even more rigidly on ourselves.

The strength of a nation does not reside in its legal system. It resides in the moral fibre of its men and women. It resides in the belief that with God's help, our highest dreams for ourselves and for our world can find fulfillment. We need more than ever before the wise leadership of men and women who live above the fog in public duty and in private thinking. Our gravest dangers come, not from enemies that threaten us from without, but from selfishness and dishonesty that can destroy us from within. Much of the world's unrest grows out of the fact that our moral consciousness lags so far behind our scientific skill. Only as we continue to serve ethical ideals that will stand the test of time can we keep our nation brave and strong and free. Only so can our students look toward the world ahead with eagerness and high heart. We are on the threshold of a mighty evolution, not revolution, of our way of life. We are living in a world that daily grows smaller. It can become a good world, a beautiful world, a peaceful world—and much of this depends on us and on our education for business and its legal environment.