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**Deep Links: Business  
School Students'  
Perceptions of the Role  
of Law and Ethics in  
Business**

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Business School Students’ Perceptions of the Role of Law and  
Ethics in Business”**

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## **Abstract**

To better understand how business school students view the relationship between law and business, we used the Zaltman Metaphor Elicitation Technique (ZMET) to elicit the unconscious thoughts and feelings of twelve students about the role of law in starting and running a business in the United States. Our study revealed three deep metaphors: system, moral balance, and force. In this subset of American culture we saw a far richer, more complex, and less negative mental model of the role of law than previous survey or anecdotal data would suggest. We were frankly surprised to see the links our subjects drew between law, business, and ethics. The results of this research suggest that the systems approach to law and management, which highlights the linkages between law, business, and societal welfare, may be a more effective pedagogical tool for teaching students about the role of law and ethics in business than a competing model that bifurcates a firm's external environment into market and nonmarket components and relegates law and social expectations to the nonmarket environment.

In 2005, Citigroup responded to a series of legal mishaps, ranging from internal-control violations that prompted Japanese regulators to close its private banking unit in Japan (Hovanesian, Dwyer, & Reed, 2004) to alleged securities fraud that resulted in its agreement to pay \$2.65 billion to former WorldCom shareholders (Steffy, 2004), by instituting a mandatory online ethics course for all of its 300,000 employees (Nolan, 2005). Similarly, a number of American business schools added new courses and materials on ethics to their curricula (Garten, 2005) after the collapse of Enron Corporation, Adelphia Communications and other high-flyers, the criminal conviction and imprisonment of high-profile executives once canonized as innovators and visionaries, and the payment of record fines by companies ranging from TAP Pharmaceuticals (\$875 million in 2001) to ten investment banks (\$1.3 billion in 2002 and 2003). A 2005 survey of 91 business schools revealed almost a 60% increase since 2001 in the percentage of business schools requiring at least one course in ethics, corporate social responsibility, business and society, or sustainability - now fully 54% require such a course (Pulley, 2005).

Meanwhile, scholars and practitioners continue to debate whether ethics can be taught at all (Williams & Dewett, 2005). A majority of the ethics officers surveyed by the Conference Board indicated their belief that ethics training would not have prevented the massive wrongdoing at Enron or WorldCom (Taub, 2002). Even scholars who conclude that ethics can be taught recognize that "additional research is needed to determine how best to teach ethics in the business school" (Williams & Dewett, 2005: 109). This paper is intended to help fill this gap in the literature.

The increased emphasis on teaching business ethics is both predictable and surprising. Ethical lapses certainly can escalate into legal violations. Thus, Lynn Sharp Paine may be correct in arguing that the best way to ensure legal compliance is to create a culture of organizational integrity (Paine, 1994). But ethical breaches alone do not result in criminal convictions, fines, or imprisonment. Violations of law do. Ken Lay and Jeff Skilling of Enron and Dennis Kozlowski of Tyco were convicted of multiple counts of violating the law, not of just being unethical.

Sometimes employees violate the law not because they are unethical but because they do not know what the rules are, where the lines are on the field. As an employee convicted of price fixing in the 1970s stated:

I thought I had morals. I still think I do. I didn't understand the laws ... not morals. What might to me be an ethical practice might have been interpreted differently by a legal scholar. The golden rule might be consistent with both views (Sonnenfield & Lawrence, 1978).

Ultimately, organizations want employees to play by the rules to avoid sanctions for illegal behavior, to attain legitimacy (DiMaggio & Powell, 1983) and to comply with the organization's own ethical standards. Even employees with a low level of moral reasoning (Kohlberg, 1984; Weber, Kurke & Pentico, 2003) may respond to exogenous factors, such as the likelihood of getting caught and going to jail, as a matter of enlightened self-interest.

Several legal scholars, including Prentice (2002), have argued that what today's business students need is not more ethics but more law. As of 2005, only three of the top twenty graduate schools of business (as rated by *Business Week* or *U.S. News & World Report*) required a law course (Wharton, Michigan, and the University of Texas at Austin). In contrast, in 1959, when Robert Aaron Gordon and James Edwin Howell authored the influential Ford Foundation report *Higher Education for Business* (Gordon & Howell, 1959), every top business school required at least one course in business law.

Although ethics courses may include some instruction in law, "[T]he field of business ethics has little in the way of fully developed models or concepts of law" (Nesteruk, 1999: 603). The conventional images of law as rules or institutions fail to capture the complex relationships between law and ethics and law and business. Law is more than "the command of a sovereign, expressed in the form of a rule" (White, 1989: 2043 n. 68). As Nesteruk explained, "The law not only reflects pre-existing social conditions and relations: it establishes new ones" (1995: 362). Law can "debase our ethical standards" (Nesteruk, 1996: 140), but it can also promote moral values (Hoch & Hamilton, 1999). Laws constrain but they also enable and help individuals convert "dead assets" into capital (de Soto, 2000). If we are to heed Nesteruk's (1999) call for the "reimagining" of the law, especially as it relates to ethics, our model must be complex and expansive enough to capture these paradoxical aspects of the legal environment of business. We believe that the "images" of law revealed in our research open a window to a better understanding of how law relates to ethics and business more generally.

We used the Zaltman Metaphor Elicitation Technique (ZMET) to elicit the unconscious thoughts and feelings of twelve students about the role of law in starting and running a business in the United States. Our study revealed three deep metaphors: system, moral balance, and force. In this subset of American culture we saw a far richer, more complex and less negative mental model of the role of law than previous survey or anecdotal data would suggest (Gilson, 1984). We were frankly surprised to see the links our subjects drew between law, business, and ethics. Repeatedly, they expressed a need for what they described as "moral balance" in business and in society as a whole; they viewed the law as essential to reaching and maintaining such a state. Management students currently bring this shared thinking or collective unconscious with them to the

classroom and will upon graduation bring it into already defined yet potentially malleable organizational cultures.

We believe that our research on how students at an elite business school view the role of the law in starting and operating a business in the United States offers new insights in the ongoing debate about how best to educate the business leaders of tomorrow. The results of our research suggest that the systems approach to law and management (Bagley, 2005), which presents the role of law and business in a capitalist system within the broader context of societal needs and norms and highlights both the enabling and constraining aspects of law, may more accurately capture the perceived interrelationships among law, business, and ethics than a competing model that bifurcates a firm's environment into market and nonmarket components and relegates law and ethics to the nonmarket environment (Baron, 1995; Aggarwal, 2001).

## RESEARCH DESIGN

Over the course of fourteen months, we used the Zaltman Metaphor Elicitation Technique (ZMET), a patented consumer behavior research methodology developed by Gerald Zaltman (Zaltman, 1996), to elicit the unconscious thoughts and feelings of twelve second-year MBA students about the role of law in starting and running a business in the United States. Each subject had two-to-five years of work experience in the United States before enrolling at an elite American business school. The subjects did not have law degrees, had had no direct involvement in a lawsuit, and had no immediate family members who were attorneys. Six of the subjects took an elective course on the legal aspects of management; six did not.

ZMET helps consumers express their deep, latent and emerging thoughts and feelings through verbal and non-verbal metaphor elicitation and storytelling (Zaltman, 2003). Metaphors are central to cognition and allow humans to express the representation of one thing in terms of another (Lakoff & Johnson, 1980; Zaltman, 1996).

Each ZMET interview is a one-on-one discussion between the subject and a specially trained ZMET interviewer over the course of one to three hours. The ZMET interview contains a number of steps outlined in Appendix A. Where applicable we have included examples of verbatim quotes by participants to illustrate the ZMET process. Use of ZMET made it possible for us to extract not only the words, but also the accompanying sensory imagery that reveals the deepest and unconscious thoughts and feelings of the research subjects on a truly extensive level (Coulter, Zaltman, & Coulter, 2001).

In preparation for the ZMET interviews, subjects received a letter via e-mail (reproduced as Appendix B) asking them to think about “the role of law in creating and running a business in the United States” and to collect eight visual images that represent their thoughts and feelings about this focal question. Pictures act as a natural and efficient way for individuals to convey higher order constructs (Zaltman & Coulter, 1995). Based on their pre-interview work, participants arrived already at an advanced state of thinking about the topic and were ready to discuss their thoughts and feelings in depth.

## SUMMARY OF FINDINGS

Our study revealed deep metaphors and constructs that we captured in a consensus map. It also revealed extreme paradoxes in the mental models of our subjects.

### Deep Metaphors

Our study revealed the following deep metaphors of the role of law in business: system, moral balance, and force. *Deep metaphors* are the major organizing principles that reflect the ways in which individuals or cultures perceive, understand, and respond to their world (Zaltman & Coulter, 1995; Coulter, Zaltman, & Coulter, 2001). They represent a higher level of abstraction than conceptual metaphors.

**System.** Through intricately woven narratives and metaphors, our research subjects described both law and business as a system. *System* was expressed metaphorically via references to machines (wheels and gears, well-oiled machine), a constructed process or approach for solving a problem, a set of rules or procedures to accomplish a task, or following a ritual. One subject told us, “I can almost see the market as a set of gears and they all interact and turn each other.” Law is “one of the lubricants that keeps the system of interacting businesses going smoothly because it’s almost a symbol of this trust and confidence because folks don’t have to stop. The system doesn’t have to seize every time a transaction occurs.”

Law makes the world more certain: “It makes it clear what’s likely to happen. You know what the rules are. . . . [I]f law didn’t exist, people could act very unexpectedly without consequences and it’d be much more difficult to operate.”

Law promotes consistency: “It puts everyone on the same page. It gives you a common language and because you expect the other person to know what the general laws are, and you do, you can get to where you want to go quicker

and with less risk. Ninety-nine percent of the time everyone follows the general norms, and then the law backs that up. For the people who stray, that's where the law comes in and gives you a right to check them back into place or at least gives you protection on the outside."

Law promotes entrepreneurship: "The reason people are entrepreneurs is because they have this foolish belief that they're still smart enough and capable enough to create something great in the world. You can only do that in a world that's fair." Law gives companies the motivation and incentive "to innovate and create and be productive knowing that even if someone doesn't play by the rules it doesn't mean that we will lose. We can still 'win' at our game that we're playing because the legal system will protect us."

Law keeps government in check: "If I know that the government can play against me every time I try to do something by just changing the rule of the game, why would I play?"

Law creates a fair playing field that is integral to the systems of business and society: "The problem is if people are willing to cheat, then the system kind of breaks down a little bit. The system being . . . the way a business operates in society."

A well-running system requires trust:

Trust gives you the ability to sleep at night and knowing that what you say or what you agreed upon is actually what you agreed upon. So it's sort of everything's at face value, and on top of that just pragmatically, again, trust just makes things easier to get things done because – you know, I was in private equity where we bought and sold companies, and to buy a company it took four legal documents – books of legal documents this thick to transfer everything of, who owns the inventory 'til what date and how do we value it and what if it goes down, but even then you can't cover everything in a legal document, and there has to be trust there. And I think a very, very bottom line of trust where everything's built off of is the legal system and it creates that foundation where you build up from there. And if there is no legal system and there is nothing sort of preventing you from saying, "Well, we agreed on this, but I'm just going to throw this piece of paper because it's worthless." It's very, very hard to do business. It's impossible actually, I would say.

Law promotes efficiency and fairness:

Not that the U.S. legal system is perfect, but for the most part the trend is that things that sort of occur in the legal system happen for a reason. The

trend is that it's good, that everyone's following the laws, and if people step out of the bounds, you get them into the mainstream. When you don't have that I think that you still have a system, but it's just very inefficient and it's not necessarily fair.

**Moral Balance.** Law establishes what we call moral balance in society: "The goal of law is to set up a framework in which tremendous value can be created but in a way such that human rights are preserved and the basic tenets and morals of society can be preserved, they're protected." Law "sets the rules of the game and kind of defines how, from a public policy point of view, how we in society think business should run or should act or what limits should be set upon business." This, in turn, leads to opportunities for fair and safe business and interpersonal relationships and transactions:

[Law] helps raise business up to its full stature and doesn't allow for the slouching and inefficiency that an "un-actualized" organization would have if law weren't there. Law sets the foundation, it gets the spine there. The spine gives it some structure but you've got to have a heart. So you can't have mindless goons running the business and expect it to be this wonderful Zen-like organization. So it is only one part but it is crucial.

Thus, our subjects saw the need for both law and ethics – both a spine and a heart.

One participant characterized law as "an instrument of necessity. If you didn't have any law to dictate what kind of business you could create and how you could run it, . . . power would probably be in the hands of a few." According to another, "Ultimately the idea of law is to help prevent inequity, I think. The law should help give equal access or equal opportunities to people, so ultimately we can avoid these situations or bad outcomes in terms or inequity and that helps businesses operate more efficiently, helps our economy operate more efficiently, because it's all tied together."

Our subjects felt that cheating would upset moral balance. So would depriving people of food, shelter or gainful employment or failing to pay taxes.

**Force.** Our subjects perceived the law to be a *force* or *entity*. Force was expressed through references to power, a powerful presence, or a source of energy, as well as to the consequences of force (getting hit, slammed, impact). Participants repeatedly talked about the law as an unseen entity that is always there: It levels the playing field, draws lines, sets boundaries in business and society, and gives direction. It creates security and is "comforting." Law acts as "protector" and "enforcer."

## Paradoxes

Our research revealed extreme paradoxes in the existing mental model of these students. For example, each of the deep metaphors of system, balance, and force had negative and positive connotations. The law is both friend *and* foe. The law is a powerful tool that can be used proactively to help business but it can also be wielded as a weapon against business. Over and over, we heard stories that echoed this paradox.

Law is a “necessary evil”:

Like the referee in a football game it keeps things fair. And even though it interferes a little bit with the game and it upsets at least one side of the game, it still is important and, when it’s working correctly, it’ll keep things going. But it can also slow things down and make things less enjoyable. And that’s how I feel sometimes about the law. That even though there’s this understanding that yes we need it that it really can slow things down.

Another participant remarked, “You want to keep the system running the way it should, you don’t want to have any big meltdowns and you do have to have your boundary systems there that keep you inside the law. But you want those to take up as little time as possible.”

One participant felt that the role of law was similar to “the God in the Old Testament: it isn’t forgiving or easily understood, not necessarily consistent, creates people, kills them all off with Noah’s Ark, and is angry . . . but the girl [in the subject’s vignette] still is comforted to know that there is this God out there—this law that governs everything.” She understands the need for a “symbiotic” relationship between herself, the manager, and the law:

The law says, “I can help you and I can protect you and I can guide you through this whole process. I’m really smart, but I’m really difficult to deal with and I speak a different language. I’m really expensive and I have all these different personalities and no one really understands me.” . . . Her relationship with the law is one of awe. He’s this transient being, it’s so abstract, she knows that it’s out there, doesn’t really understand it. Doesn’t know how to talk to it, has a lot of respect for it, but they don’t interact well because she doesn’t even think she’s on that level. It’s very hard to grasp. . . . Overall there is some sort of hope that nothing else works better than the U.S. law system. It’s cumbersome . . . but it works

overall, people's rights are protected and people are happy. . . . There is a friendship with the lawyer and the business, because it's symbiotic where the lawyer needs the business because it gives her revenues, and the business needs the lawyer because it's one of her beacons that's guiding her through her life.

This student obviously perceives the positive aspects of the role of law and the need for incorporating the law into management in order to be successful. This subject's mental model incorporates both negative and positive thinking about the role of law, however. Even though the subject perceives the law to have negative aspects, the subject articulates the necessity of the law to maintain order or "moral balance" in society: "We think of it as a negative thing: ambulance chasers, money hungry and low-life reptiles, but without the law, we could not function as a society . . . the nebulous, less easy to define good that a legal system brings to society, like the stability that it brings, the sense of comfort, the sense of being able to sleep at night."

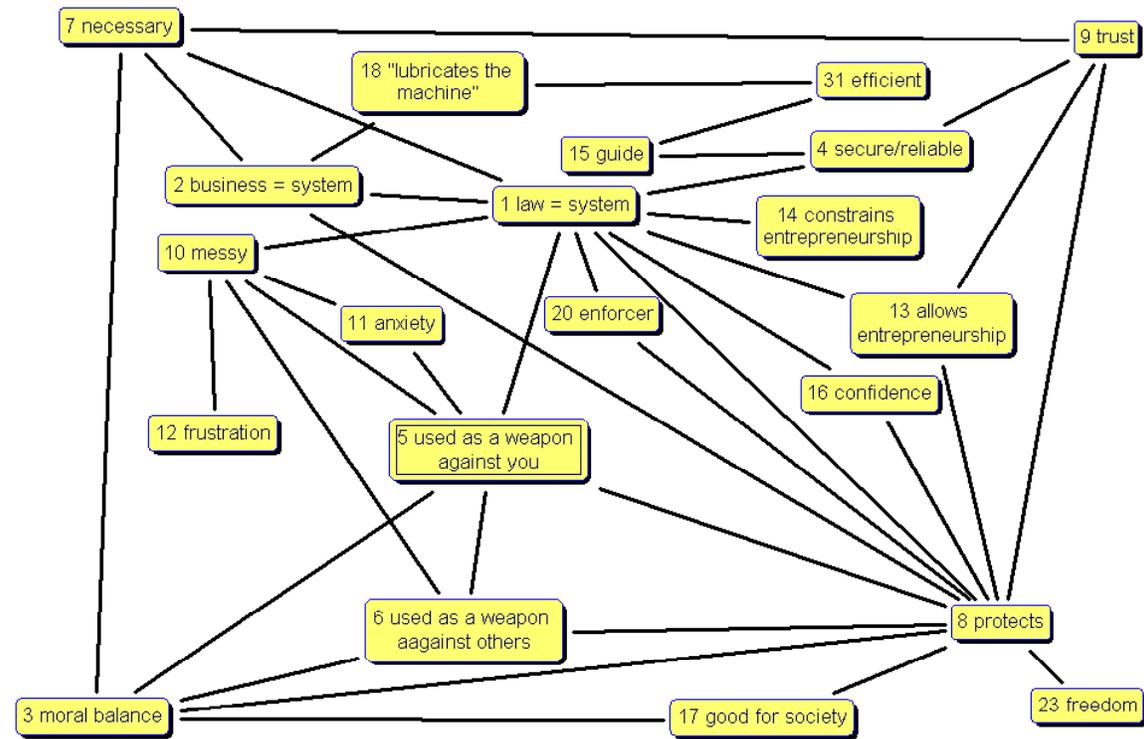
### **Constructs and the Consensus Map**

The ZMET interviewer interprets the stories and metaphors that participants express about the focal topic and assigns a construct to these ideas, concepts or themes during the analysis portion of a ZMET study. Constructs capture the shared ideas, concepts or themes that research participants express during their ZMET interview (Zaltman, 2003). A construct could be a value, such as emotional comfort, or a specific attribute, such as sleek.

A major outcome of ZMET is a consensus map. Consensus maps depict linkages among constructs: "Direct and indirect connections between constructs (or themes) represent a reasoning chain or thinking process showing how one idea leads to another. These associations are important because addressing one construct will have a ripple or multiplier effect on those with which it is causally connected" (Zaltman & Coulter, 1995).

We can imagine that each construct is a button that, if highlighted or activated, would in turn highlight or activate linked constructs (Zaltman, 2003). Understanding these linkages helps marketers create messages that will cause consumers to act differently: "Knowing how constructs interact via various reasoning mechanisms allows us to know which constructs might be the best vehicles for influencing others and which constructs might be affected unintentionally by efforts to influence other constructs" (Zaltman & Coulter, 1995).

Our consensus map is depicted in Figure 1.

**Figure 1: Consensus Map**

Consensus maps normally contain between twenty and thirty constructs, and they typically represent more than 80 percent of all constructs mentioned by any one participant (Zaltman, 1996). By interpreting these maps, market researchers can gain an understanding of the current shared thinking that exists in the minds of the customer about a market experience. Communications, messages, or even advertising can then be crafted to resonate with consumers on a deep level (Zaltman & Coulter, 1996).

Research shows that the number of key constructs revealed through the application of ZMET does not necessarily increase by increasing sample size. In three studies with major consumer product firms, the number of key constructs revealed through one-on-one interviews was found to be approximately thirty-five both when twelve people were interviewed and when one hundred people were interviewed (Zaltman & Coulter, 1995). Accordingly, we believe that our findings are generalizable.

We found that the constructs of *law as a system* and *law protects* were the most prominent and were most often interconnected with other constructs. The idea of *protection* was linked with other shared constructs, such as the idea of *trust*. *Protection* leads to *entrepreneurship*; it builds *confidence*; and it is necessary to the *system* that is the law. Participants also shared negative thinking about the

idea of protection because laws that protect them could also *be used against them* as they protect others.

These constructs were in turn all linked to the idea of *moral balance*. For our map we defined “moral balance” as “necessary in the system of society, when the law creates order and sets the terms for morality in the system of society.” In the minds of our participants, moral balance is the force that not only keeps the systems of law and business *running* but also society as well. Without moral balance, the systems of law and business would experience system failure. This in turn would throw the system of society out of balance, thereby destroying trust and the ability of humans to interact with one another on a meaningful level.

*Moral balance* linked to the constructs of *Used as a weapon against you*: when the law is against you, there is a threat or danger to you and your business; to *Used as a weapon against others*: when the law is there for you, proactively on your side; to *Necessary*: always there, omnipresent, like a deity or a force; to *Protects*: when the law offers protection to people in business and to businesses; and to *Good for Society*: law is for the “higher good,” it improves society through economic creation. These ideas in turn linked to other constructs, which taken together reveal the mental model of our management students.

Certain constructs may exist on the periphery of the current shared thinking. Examples of peripheral thinking on our map include:

***Efficient***: when the law seems easy to understand and navigate and utilize

***Secure/Reliable***: when the law creates a safe place in which to perform business transactions

***Guide***: a lawyer acts as your guide to understanding and dealing with the law in business

***Confidence***: when the law gives you confidence

***Freedom***: what the law gives you, feelings of freedom in running a business

***Enforcer***: when the law is on your side and helps police or referee business and society

Marketers can work to develop messages that bring peripheral ideas to the forefront in the minds of their customers. If constructs and links exist on a consensus map that marketers want to be “top of mind” for their customers, then marketers can work on new messaging that intensifies this thinking in the mental

model (Zaltman, 2003). This suggests that a course in law could enhance students' awareness of the need for socially responsible behavior. Law as a *system* links directly to both *protects* and *necessary*, which in turn link directly to *moral balance*. As a result, a course focusing on law could help bring these other constructs to the forefront in the minds of students.

This interdependence can also be found in the business ethics literature. Nesteruk notes that "specific legal issues are as a practical matter often intertwined with prominent ethical issues occurring in the workplace" (1999: 363). "[A]s corporate roles change [as a result of changes in the law] so must the definitions of virtue for individuals who occupy these roles and work in the corporate setting" (Nesteruk, 1995: 363).

Our subjects' perception of the enabling role of law society is strikingly consistent with the views expressed by Douglass North, a Nobel laureate in economics, and other scholars in the so-called new institutional economics movement. According to North (1990: 3), institutions provide "the rules of the game in a society." Scholars agree that although there is no "one best way" to organize a capitalist system, "there are a few essentials, such as private property and the rule of law" (McCraw, 1997: vi). de Soto (2000) argues that the inability of many poorer non-Western countries to raise investment capital is not attributable to a lack of savings or assets but rather to a "bad legal and administrative system" (2000: 156) that "lacks ways to represent the invisible potential that is locked up in the assets we accumulate" (2000: 7). Country comparisons revealed a positive association between legal protections and economic growth (Johnson, LaPorta, Lopez-de-Silanes, and Shleifer, 2000). The World Economic Forum found a statistically significant relationship between a country's per capita gross domestic product and each of the following: judicial independence, adequacy of legal recourse, demanding product standards, stringent environmental regulations, intellectual property protection, and effective antitrust laws (Porter, 2002: 59).

Historians recounting the emergence of the modern American state in the period from 1877 until 1937 have "overwhelmingly, and with few exceptions," portrayed the rule of law "as something of an obstruction, a brake, an inertial force, a structural impediment, an ideological hindrance, an exceptionalist constitutional barrier to the development of a modern regulatory and administrative welfare state in the United States" (Novak, 2002: 14). Novak challenges this view of "law as obstruction" and argues that American public law in this period "far from being an obstruction or hindrance to the formation of a modern social-welfare state was in fact a font of creative energy – of legal ideas, institutions, and practices – that was absolutely crucial to the creation of [a] new regime of centralized, administrative, regulatory governance in the United

States” (Novak, 2002: 14). Importantly, laws do more than regulate and constrain; they also enable and empower.

This last point is critical. While traditional law and economics’ scholars, such as Posner (2002), have focused primarily on the constraining aspects of law, the new institutional economics movement has highlighted its enabling aspects. This approach is consistent with our subjects’ view of the world and seems a more promising way to inculcate in business students a respect for law than an approach that often characterizes law as a hindrance to free markets, not as a necessary precondition.

### IMPLICATIONS FOR ACTION

Ferrano, Pfeffer, and Sutton (2005) laid much of the blame for recent corporate scandals at the feet of economists and the underlying first principle of economics they teach, namely, “that every agent is actuated only by self-interest.” They warn that such teachings “can become reified as social norms, and produce an associated language and terminology that affect behavior.” Not wanting to be a chump, business students appear more likely to pursue their own self-interest when they are taught that this is what their fellows are all going to do.

We submit that just as a savvy marketing manager may utilize a consensus map to create targeted messages that resonate with customers on a deep level, so too may educators use our consensus map to successfully create persuasive messages that resonate on a deep level with business school students. Educators who know their “customers” would be better equipped to shape curricula that will shift the current shared thinking from the existing negative constructs to the more positive key constructs on our map.

By focusing on certain of the peripheral constructs revealed in our consensus map, educators might be able to develop curricula that can shift this thinking to the forefront of student thinking. For example, the construct of *Guide* is linked only to *Secure/reliable* and *Efficient* on the current map. Educators could create stronger links with the constructs of *law protects* and *business* if they did a better job of showing how important lawyers are to ensuring the rule of law and the value creation law enables. Perhaps managers would then be less likely to avoid the legal system and interaction with lawyers and instead proactively seek these out as means of enhancing value.

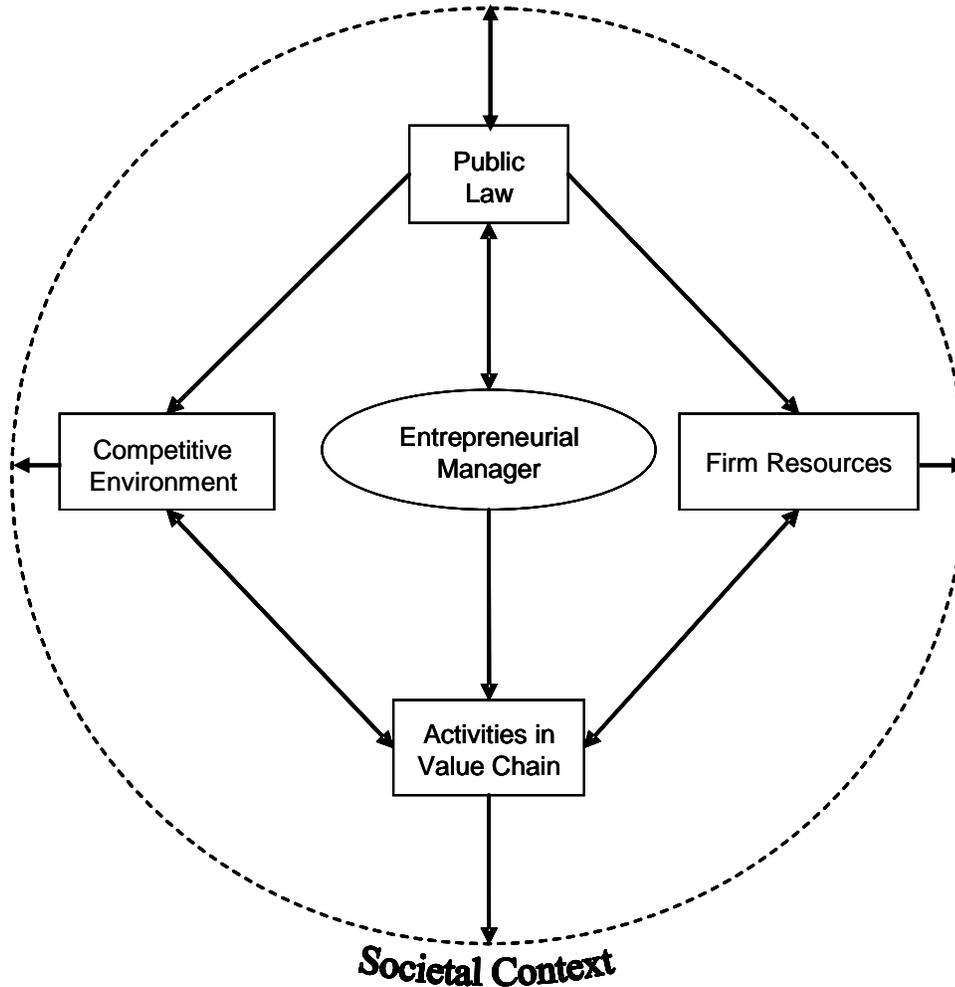
Our research also has implications for training within organizations that may have a deeply embedded existing culture of “avoidance” around the role of

law. It may be possible to introduce new thinking into these established organizational “cultures” that will retrain managers to regard the legal system and lawyers not as “cops” but rather as “enablers” or “protectors.” Returning to the case of Citigroup, our research suggests that ethics training alone will be inadequate to change a corporate culture driven by the need to make the numbers. This fact appears not to have been lost on the Federal Reserve Board, which instructed Citigroup not plan to do any big new mergers or acquisitions until it addresses “the deficiencies in compliance risk management” (Wighton, 2005). Citigroup and many other companies with a history of compliance problems may be better served by a pedagogical approach that taps into a collective unconscious that links business success with ethics *and* law.

### **THE SYSTEMS APPROACH TO LAW AND MANAGEMENT**

The deep metaphors revealed by our research, coupled with the adverse effects of focusing on just self-interest (Ferrano, Pfeffer, & Sutton, 2005), confirm the need to better integrate the treatment of law, ethics, and business in business school curricula. Instead of relegating law to what Gorden & Howell (1959) and Baron (1995) call the “nonmarket environment” and of focusing on just its constraining aspects, the systems approach to law and management (see Figure 2) proposed by Bagley (2005) may provide a more complete and balanced picture of the role of law and ethics in business success.

**Figure 2: A Systems Approach to Law and Management**



Source: Adapted from Bagley (2005: 14).

Law and business are part of the broader system of society (Preston & Post, 1975; Bagley, 2005). Failure to meet society's expectations of appropriate behavior or to treat stakeholders fairly (Jensen, 2001) can jeopardize a firm's ability to compete effectively.

Corporations are "legal artifacts" (Cragg, 2002: 126) that rely on legislative action for their very existence. Historically, corporations were granted charters and limited liability only when private funds were needed to finance quasi-public functions, such as bridges and banks (Bagley & Page, 1999). Notwithstanding the frequent incantation in the ethics literature that managers have a fiduciary duty to "exercise their responsibility with the exclusive financial interests of the company's shareholders in mind" (Cragg, 2002: 114), that is

simply not how the courts have interpreted the law (see cases cited in Bagley & Page). Directors owe a fiduciary duty to the corporation, and in deciding what is in the best interests of the corporation, directors may take into account the effect an action may have on the shareholders but also the interests of other constituencies, such as employees, customers, suppliers, and the community at large (*Unocal*, 1985). The role of the board shifts from “protector of the corporate bastion” to “auctioneer” seeking the highest immediately realizable value for shareholders only when a break-up of the corporation or a change of control has become inevitable (*Revlon*, 1986). For this purpose, change of control is very narrowly defined and excludes situations in which one disaggregated set of public shareholders transfers its shares to another disaggregated group. As a result, even though Time had agreed to a friendly merger with Warner Brothers, whereby 65% of the stock in the newly merged entity TimeWarner would be owned by the former Warner shareholders, the Delaware Supreme Court ruled that there was no change of control (*Paramount v. Time*, 1990). Accordingly, the Time board did not violate its fiduciary duties when, in order to protect Time’s “journalistic integrity,” it rejected a higher Paramount cash offer for Time that a majority of the Time shareholders preferred to a merger with Warner. This decision reflected the fact that a corporation is not a private contract between the managers and shareholders. It is part of a community until its demise (by break-up or change of control) becomes imminent.

The systems approach is a dynamic model. Law affects business firms, but firms also affect the law and society as a whole (Edelman & Suchman, 1997). Law is not just an external force acting upon managers and their firms. It offers tools legally astute managers can use as part of their market strategy to manage the firm more effectively.

Law helps shape the competitive environment and affects each of the five forces that Porter (1996) identified as determining the attractiveness of an industry: buyer power, supplier power, the competitive threat posed by current rivals, the availability of substitutes, and the threat of new entrants (Shell, 2004). Law also affects the *internal* context of the firm, that is, its resources (Barney, 1991) and capabilities (Teece, Pisano & Shuen, 1999), including the way the firm is organized. In particular, law affects (1) the allocation of firm resources among stakeholders (e.g., by allocating power between the directors and shareholders in antitakeover and constituency statutes); (2) the environment in which resources are converted into products (e.g., by imposing strict product liability on each firm in the chain of distribution); (3) the marshaling of human resources (e.g., by permitting employment at-will while requiring the payment of damages for wrongful termination and banning employment discrimination); (4) the marshaling of physical capital (e.g., by offering limited liability to investors, giving entrepreneurs fresh starts under the bankruptcy laws, and promoting

transparency in the capital markets under the federal and state securities laws); and (5) the uniqueness of resources (e.g., by providing copyright, patent, trade secret protection and enforcing certain noncompete agreements).

Failure to comply with law can result in the loss of resources, such as cash paid out as fines and damages or lost business, and place the firm at a competitive disadvantage (Baucus & Baucus, 1997). Compliance is path dependent – firms that violate the law once are more likely to violate it again (Baucus & Near, 1991). On the upside, effective use of the law can help firms protect and leverage the firm's valuable resources (Bagley, 2005).

Given the public law, the competitive environment of the industry, and the firm's resources and capabilities, the legally astute manager can use a variety of legal tools to assess opportunities, to define the firm's value proposition, and to select and perform the activities in the value chain. These range from patents to contracts to classes of preferred stock with detailed rights, preferences, and privileges. For example, venture capitalists often use stock options as equity incentives to align the incentives of the management team with those of the investors. Such arrangements can decrease the agency costs (Jensen & Meckling, 1976) arising out of the separation of ownership and control.

Law is not static, however. Public laws will change in response to corporate lobbying, firm action (especially misconduct), and societal demands. The passage of the Sarbanes-Oxley Act of 2002, in response to widespread financial fraud, and the Foreign Corrupt Practices Act of 1978, in response to government bribes by multiple firms, are just two examples of this. As a result, "anticipating, understanding, evaluating, and responding to public policy developments within the host environment" is a critical managerial task (Preston & Post, 1975: 4).

Moreover, law is rarely applied in a vacuum and legal inference is often ambiguous (Langevoort & Rasmussen, 1997). Especially in common law jurisdictions, such as the United States and England, the application of legal rules to a given set of facts is often not clear-cut. As U.S. Supreme Court Justice Oliver Wendell Holmes (1897) explained, legal advice is often just a prediction of what a judge or jury will do in a future case. Furthermore, the distinctions that certain scholars make between legalistic and normative approaches to preventing ethical abuses (Sama & Shoaf, 2005: 179) are not as crisp as they may appear on first glance. In fact, "moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied" (American Bar Association, 2002:70).

## CONCLUSION

Evidence suggests that a focus on self-interest alone leads to less cooperation and altruism (Frank, Gilovich, & Regan, 1993). A business school curriculum that ignores the role law plays in making markets possible threatens to undermine students' appreciation of the manner in which law undergirds the capitalist system. Our research suggests that the answer to the question of whether business students need more ethics or law is "both." Teaching materials that are expressly designed to highlight the positive associations or linkages between law, business, and societal welfare, that bring that top to mind, would appear to have a greater likelihood of altering students' perceptions and thus their behavior than simply exhorting students to be ethical or to comply with the law. This suggestion is consistent with the recommendation by Jeffrey E. Garten, the former dean of the Yale School of Management, that business schools not only integrate ethics into their curricula but that they also teach more business law (Garten, 2005).

Our results, particularly the image of law, ethics, and business as a system, should also inform efforts to develop a contemporary framework for stakeholder theory (Buchholz & Rosenthal, 2005). The systems approach to management abjures the traditional economic view that a for-profit corporation "relates to society only through the marketplace and that marketplace transactions constitute the whole of its existence and reason for being" (Buchholz & Rosenthal, 2005: 146). Instead, it adopts the pragmatic approach suggested by Buchholz and Rosenthal, and it embeds, within an integrated model, the "value-creation activity of business" (Freeman, 1994: 419) within the context of "the community dynamics by which life thrives and in which the experience of value and its furtherance emerges" (Buchholz & Rosenthal, 2005: 145).

## Appendix A: Detailed Description of ZMET

Step 1: *Storytelling*. Using the participant-supplied images for inspiration, our participants were asked to describe how each of the images they brought with them to the interview related to the role of law in starting and running a business in the United States. As our participants had invested time and energy thinking about the topic and searching for meaningful images, they came to the interview with ideas about the *story* they wanted to share with the interviewer. During this step the interviewer probed for the deeper meaning of the visual metaphors that participants described and connected to their images.

Step 2: *Missed Images*. Occasionally participants had an idea about the topic but were unable to find an image that they thought adequately expressed their thoughts and feelings or would have helped them tell their story. Participants were asked to describe any pictures they wanted to find but could not. The interviewer then probed for the deeper meaning of the missed images using a process similar to the one described in step one.

Step 3: *Triad Sort and Image Comparison*. The interviewer randomly selected three of each participant's pictures and asked how any two were similar yet different from the third with respect to their relation to the role law in starting and running a business in the United States. The process of randomly selecting three pictures and laddering on the constructs they elicited continued until the constructs surfaced became redundant.

Step 4: *Metaphor Elicitation*. The interviewer randomly selected one or images. Participants were then asked to imagine widening the frame of one of the pictures and to describe what would enter the picture that would affect its meaning for them in relation to role of law in starting and running a business in the United States. Participants were asked a variety of questions that further altered the picture in their minds' eye, such as, if they could enter the picture, what might they be doing, thinking, feeling or saying? How might they interact with anyone or anything already in the picture? Participants were encouraged to explore additional thoughts and feelings that surfaced during this imaginative process.

Step 5: *Sensory Images*. In this step, the images were taken away and participants were asked to explore their non-visual senses to convey what is and is not representative of the role of law in starting and running a business. For example, the interviewer asked what the role of law would sound like. Participants characterized the sound of the role of law as a low hum, like that of a machine, an air conditioner or refrigerator, that is constantly present as a low background noise. As one participant stated, "It just kind of fades into the background but it's always there...." This question was repeated around the sensory exploration of taste, smell, texture and feel, and color.

Step 6: *The Vignette*. In this step, participants were asked to use their imagination to create a short movie, play or story that further articulated their thoughts and feelings about the topic. This step is based on theories and evidence that different areas of the brain become active when engaging *still* as opposed to *moving* images (Zaltman, 2003). New ideas may emerge as a new area of the brain is activated during the vignette creation and articulation. Our participants were required to include at least three characters in their vignette: themselves, the role of law in starting and running a business, and one other character of their choosing. They were told that each character could take on physical characteristics and think, feel, speak, and so forth. The interviewer then asked a series of questions that encouraged participants to describe in detail what the “plot” of the story was; how the “characters” interacted with each other; and finally how the story ended and what thoughts and feelings an “audience” might have after seeing their story unfold.

One participant wove a tale of attending a bullfight with Ernest Hemingway. He described the scene quite vividly: “The matador is the role of law, because that’s the character that I really looked down upon in the beginning and looked at as a very constraining figure. When somebody was doing something wrong or something I didn’t want to come up against. And not appreciate the benefits of his role. And because of me not being able to understand it led me to fear it. Ernie would be another small business owner who’s been through this and sees how things work. After seeing the matador, seeing that it’s not an act of kind of viciousness, but that in some sense there’s a very distinct role that he has in bringing about order, and not only order, but this kind of beauty of the whole engagement that plays a very distinct role in the culture of a people. . . . The matador is a very controlled individual, not necessarily very emotional, views his job very much as a duty, and is very — is kind of firm, unyielding, but at the same time, I think there is this element of compassion — or at least passion that is while he’s probably there.”

One subject seemed to focus solely on the negative aspects of the view of the role of law. This participant created a story of running a McDonald’s franchise and having lawyers intrude on his running his business by trying to dictate management decisions in the name of fending off potential lawsuits: “I feel totally micromanaged. I feel like, hey, I know how to run my own little store; I don’t need some big executive telling me exactly what temperature my coffee has to be. It’s frustrating for me as the manager wanting to run my own store as best as I see fit that decisions made by the president of the company or by his legal advisors are impacting my freedom of choice to run my business as well as I can.”

He went on to describe the embodiment of the role of law as a very negative person who is proactively seeking ways to sue companies without merit simply to try to extract money from them. “He is totally the sort of money grubbing kind of guy, he is the ambulance chaser image that I have of lawyers and he sees it as though he’s going to get 50 percent of whatever she gets in the

court case. And he also sees McDonald's as an organization with very deep pockets and so they're the ideal target for what he's looking for . . . from the lawyer's perspective he's pretty much just out for money."

*Step 7: The Digital Image.* In the final ZMET step, each participant created a summary image or digital montage with the aid of a specially trained digital artist and the computer program Adobe Photoshop that gave a visual overview of their thoughts and feelings about the role of law in starting and running a business in the United States. Each of the images that the participants brought with them to the interview were scanned first. The digital artist then, acting as the "hands" of the participant, led them through the construction of an overview image. Participants had the opportunity to digitally alter their original images through the varied tools in Photoshop by changing colors, editing, cutting and pasting, and the like. Participants were then asked to summarize the "story" of their digital image. This step often uncovered deeper insights about their thoughts and feelings about our topic than in the previous steps.

One student's digital image is presented in Figure 3.

**Figure 3**



The subject's description follows:

So there's a border of Robert McCloskey's *Make Way for Ducklings*, and basically I put it on the border because I see, I guess, law as creating order and helping, I guess, businesses get their ducks in a row or get everything organized in a correct manner, which is why it's all the way around the border. So it's encompassing the whole idea.

And then the upper left corner is like an illustration of a cloud that's raining on a pill, and this is the—I think it's a Zoloft ad or a Prozac ad—and I guess I put it there. I chose it for two different meanings. One is most of the lawyers I know of are unhappy people, and this sort of is representing the lawyer, or it could also represent the person who hasn't utilized the law in a good manner.

And so I picked four things to put in the corners. In the top right corner is a tool kit. It's a fly fishing tool kit, and then in the bottom right corner is a camera, and then the bottom left corner are some coat hangers. I guess basically what this symbolizes to me are the different players in the whole thing where law is related to business. So you have the lawyer who's in the top left corner and he's the pill being rained on. You have the coat hangers. That sort of helps you organize things, and you have the tool kit that, again, helps a business get its act together, and then you have the camera lens which is the another tool that helps sort of, I guess, shed light or have you look at something differently. So you're looking at things through a different lens.

And then [in] the center on the right side I have an ultrasound picture and the left side I have a woman who's twirling hula-hoops, and this is sort of the outcome of law with business, and the ultrasound picture shows what happens when you take law and all the different players that you find in the corners of my picture and you put it all together. You shed light to a situation. So you're shedding light to a pregnancy and you're looking at something more in depth than you would if you were by yourself. On the left hand side you have a woman with the hula-hoops, and that has to do with, again, when the whole process comes together you have people finding loopholes in the law and utilizing those loopholes.

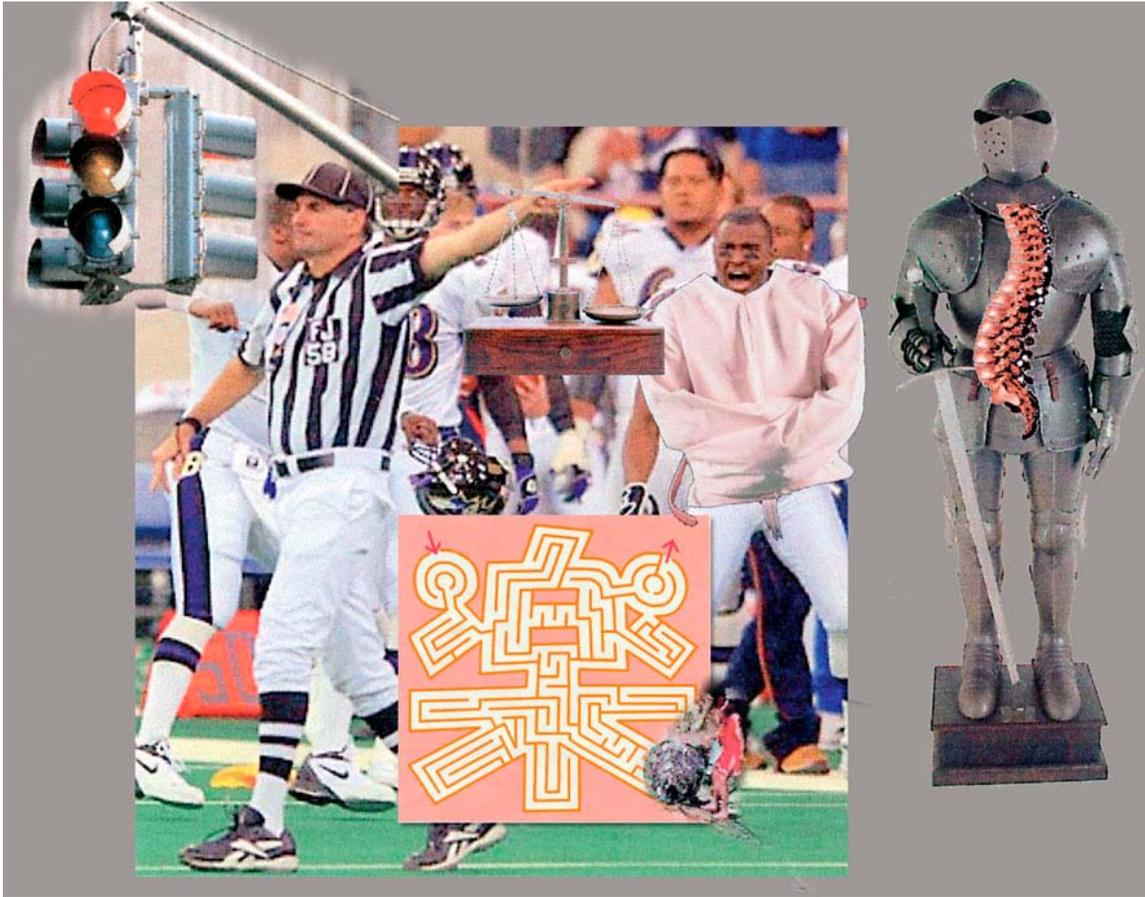
So basically, I guess overall the law or the ducks is just all pervasive. It's something that's an overall theme, is getting everything in order, and then the corners are the tools and then the middle is the outcome. I picked nice

hangers and it's both a tool and making something look more professional and also putting things in order, because they're hung very orderly on the pole. And I guess I see the hangers, again, as a tool and also to give it more of a finish, that if you've engaged a legal counsel, the business tends to be much more professional and it's done in a much more orderly fashion than if you were on your own.

You know, I guess the camera is like the lawyer, and so the client would be looking through the lens. I guess it's a different way of looking at a situation. So it's not necessarily just a camera and taking a picture. I see it more as looking at things through rose colored glasses or looking at things through like a microscope or a telescope where you're looking at a different lens. So there's a situation that happens and you see it a certain way, and then you talk to a lawyer about it and they see it a completely different way. They see it under the lens of law, of well, this is what you did and that was legal or not legal, and this is what the other person did, and this is sort of how we look at it legally. So I guess I'd see it as the client looking through the lens and being able to see what they see every single day, but under a different light. I think the people who find them (loopholes) tend more to be lawyers because they're more familiar with just the legal code and how things are done and what's sort of acceptable and not acceptable, both in written law and also in practice, in case law. So I think the lawyers would be the ones finding the loopholes, but the business people are the ones that actually extract value from them...have you meet my lawyer? He's my overworked, unhappy lawyer who's being rained on.

Another student's digital image is presented in Figure 4.

Figure 4



The subject's description follows:

In the center of the whole thing as well is this picture of the referee in the football game. And just to the left of the referee kind of hanging over his head or right by him is the stoplight. And the referee and the stoplight are playing kind of a similar role. There is some stoppage in the game, there is some interference going on in the way the things are running as the role of law plays in business all the time. It'll stop things. And you can see some of the anger of the face of some of the players in this game as in business people get upset when law kind of slows things down and keeps things from happening, keeps the game from being played. And yet each of these, you know the stoplight and the referee, are playing a crucial role. They're saying that some rules need to be kept so that some dangers are being avoided. The referee makes sure the rules are followed, that injuries are avoided by not allowing certain kinds of behavior.

The stoplight doesn't allow cars to speed through whenever they'd like so that there are not accidents and people are able to get to their destination safely. And you can see kind of hanging down from the referee's finger is the scales of justice. And that's because part of this role that law has is to mete out the rewards and punishments and make sure that they're distributed equitably in business. And I think that's fair to say that that kind of – some of these interferences, even though they're frustrating and sometimes annoying, they are essential if things are going to be equitable. If justice is really going to be had in business so that people can have the confidence and the security that when they play this game of business, when they enter into a business, create a business or run a business, that they will be able to get their just desserts. They'll be able to get the things that they worked for.

Then kind of below in the picture is the maze, kind of the underside of law, the underbelly. It's very complicated and it can be very frustrating and very intricate and hard to understand. And kind of leading into the maze is Sisyphus pushing the rock that he never can quite get to the top of the hill. He can never quite get through the maze of law. He is just continually wandering around in the maze. And it seems like in business there are people that are forever just pushing the stone forward trying to show that they're in compliance with the law and that they understand the law and they aren't necessarily doing anything that I would call very productive even though they're doing something that's important. But it doesn't feel very productive; it never feels like the job is done.

And then to the right of the picture in a little bit less of – this is kind of separate – is the more annoying aspects of law or the controversial and it interferes is the armor and the spine. And kind of the spine is integrated into the armor. This is the role of law as kind of the backbone and the external protection to business. And I don't think there's any controversy to this or any kind of annoyingness to this element of law because people recognize that it provides the structure and the support for businesses to be creative and be run productively. And it protects them once they are created, once they are being run, it protects them from behaviors and actions that other organizations or people might take that would damage them and can destroy them. And I think that's kind of a consensus that that's a very important aspect of law so I wanted to keep it separate from kind of the more contentious images to the left.

You know law supposedly is pretty impartial and pretty objective and straightforward. But yet the results are always very – you know evoke a lot of emotion and passion from those that are playing in the game. And I think that's pretty typical when you see agencies that will come in and

kind of impassively levy some fines or different things and businesses get extremely irritated and agitated. Or else on the other side very happy that someone is doing something and they come out with press releases that say we're so happy that finally the FCC has seen that the Baby Bells are not playing fair and the Baby Bells are screaming foul play. And so I think that's kind of symbolic of how things tend to work.

One last note is that the angry player is in a straightjacket and I thought that fit because the role of law sometimes is very restraining and restrictive. And in the wrong cases when it's that restraining it can be maddening for players in the game of business when they are being restricted from something they don't feel like they should be restricted from. In this case the player probably thinks the penalty was called unfairly. But, on the other hand, when people are insane and when people aren't playing the game correctly and they've lost their sense of the rules, the law has to be able to restrict and restrain them from inflicting damage and pain into the system. That's why he's wearing that. I chose kind of the gray stolid granite color in the back because the law is not a very exciting thing in particular. It doesn't really jazz up the world of business. It doesn't necessarily create innovation but it is solid and it creates a background upon which innovation and creativity and productivity can be built. But it just kind of conveys that image of it's solid but not very exciting.

I had the spine kind of as if you were able to look through the armor and see that it's actually the backbone inside the armor. And it shows that I see those two - I see the role of law both as the foundation and as the external protectiveness for business, as being integrated. That they're complementary. You can't really have this system, this free market system that we have, without law so it's the backbone of it, it gives it some structure. And then at the same time it protects the businesses as they are going concerns. So I thought those were integrated.

It's most frustrating; it's kind of this maze area with this Sisyphus figure pushing the rock. It can seem useless and it can actually seem overly restrictive and it can seem inefficient. And that's the very negative side of it. On the positive side would be this protection and kind of this foundation aspect represented by the spine and the armor. And also the referee and the stoplight I think are relatively positive images because I think everyone recognizes that you can't play football without a referee and you can't have a traffic system, you know an infrastructure, without stoplights. Even though those things can sometimes be annoying and referees can make bad calls and stoplights can be put on bad timers and last for too long. But for the most part I think people recognize that they're

good things. And the scales of justice I think are a positive symbol that even though we don't always like getting the punishments, we like the fairness and we like the process of justice. That gives us confidence in the system.

*Step 8: Developing the Consensus Map.* After analyzing the verbatim transcripts of the one-on-one interviews, we identified the key ideas, or constructs, expressed by our participants about the role of law in starting and running a business in the United States. As discussed earlier, the consensus map is a community of relevant constructs derived by researcher interpretation that illustrates the links between these shared ideas.

*Step 9: Identifying Deep Metaphors.* ZMET uses a set of deep metaphors that are the fundamental ideas that describe a human experience.

## Appendix B: Participants' Instructions

Dear \_\_\_\_\_:

We are very pleased you will be participating in our research project. This letter contains important instructions to prepare you for your interview.

We are interested in your thoughts and feelings about: the role of law in creating and running a business in the United States. When you **think** or **hear** about the role of law in creating and running a business in the United States, what thoughts and feelings come to mind? Please find and bring with you to your interview eight pictures that express your thoughts and feelings about the role of law in creating and running a business in the United States.

Please note that each picture should represent a different thought or feeling. Your pictures may come from any source such as a newspaper, catalogue, magazine, or be pictures you take with a camera especially for this assignment.

Some examples of pictures people have used in unrelated projects include: a child sleeping in a grandparent's arms to show trust; a cow in a field to show the contentment that comes with eating a favorite food; a butterfly to show the freedom of being on vacation; and a steaming kettle to show anger at having to wear certain clothes. The pictures need to be meaningful only to you, not to anyone else. So, let your imagination guide your selection. Please try not to discuss this project with anyone until after the interview.

You should allocate three hours for your interview. It will take place at [location]. You are scheduled to begin at [time and date]. A specially trained interviewer and digital imaging specialist will work with you. The interviews are completely confidential.

If you are unable to attend the interview, or, if you have any questions, please call me at \_\_\_\_\_ as soon as possible. I look forward to meeting you.

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