

The Case For Teaching Industry Self-Regulation In Higher Education

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Today, companies and nonprofits face increasing pressure to operate responsibly. While traditional governmental regulation remains a crucial way of ensuring responsible practices, organizations often operate within gaps where formal legal frameworks are slow to adapt.

“Soft law,” particularly independent industry self-regulation, plays a critical role in filling those gaps. But since industry self-regulation is not widely understood, I believe law schools, graduate business schools and public policy programs should expand their curricula to include a deeper focus on this mechanism as an essential tool for shaping corporate behavior.

A first step in this direction came with a John Templeton Foundation Grant to our Center for Industry Self-Regulation, enabling us to develop a series of modules on industry self-regulation for graduate programs. This curriculum will explore the conditions that allow self-regulation to flourish, identify where it has and has not worked and examine new potential use cases.

A body of academic research already exists for the study of industry self-regulation. For instance, the *Journal of Business Ethics* provides a historical and analytical perspective on how self-regulation fits within the broader scope of corporate social responsibility and stakeholder management. It traces how corporate governance plays a role in shaping ethical business practices.

Meanwhile, research conducted at Stanford Graduate School of Business on why self-regulation can pay off underscores the perceived need for third-party bodies to monitor self-regulation activities, making it a relevant consideration for business schools aiming to teach future leaders about the complexities of corporate governance.

The Law and Economics Center at George Mason University's Antonin Scalia Law School hosted a 2022 Research Roundtable on Industry Self-Regulation where scholars from around the country presented academic research. This inspired us to co-host our 2023 and 2024 "Soft Law Summits" in partnership with Arizona State

University's Sandra Day O'Connor College of Law's Center for Law, Science and Innovation, a leader in the academic study of soft law.

This study of industry self-regulation has not been and will not be done in a vacuum. Many other institutions of higher education across the U.S. are devoting additional resources to researching and teaching business ethics, with one recent example being Boston University's launch of the Ravi K. Mehrotra Institute for Business, Markets and Society at the Questrom School of Business.

Why Soft Law And Industry Self-Regulation Matter

Soft law refers to nonbinding guidelines, principles and codes that influence corporate behavior. Examples include the United Nations' Guiding Principles on Business and Human Rights, corporate social responsibility frameworks and company-specific codes of conduct, such as those at Starbucks and Google.

Industry self-regulation encourages companies and entire industries to establish their own rules and standards that often go beyond legal requirements and include independent compliance monitoring and other accountability mechanisms. This approach offers several benefits:

- **Flexibility And Responsiveness:** Self-regulation allows industries to respond rapidly to emerging challenges and stakeholder concerns. In sectors where technology and societal expectations evolve faster than laws can be enacted or amended, self-regulation provides a way to address these issues in real time.
- **Innovation:** Regulatory compliance can sometimes stifle innovation. Self-regulatory frameworks, in contrast, offer companies the freedom to experiment with new practices and technologies while still adhering to ethical standards.
- **Public Trust:** Businesses that engage in industry self-regulation demonstrate a commitment to responsible practices. This helps build public trust and can serve as a competitive advantage.
- **Formal Regulation:** Occasionally, industry self-regulatory initiatives may set the stage for future formal regulation. By adopting best practices, industries can inform policymakers and help shape future regulations in ways that are practical and effective.

Given these benefits, it is highly desirable, in my view, for future attorneys, business leaders and policymakers to be equipped with the knowledge and skills to navigate “soft law” frameworks. That is why I am advocating for law schools, business schools and public policy programs to integrate industry self-regulation into their curricula to prepare students for the evolving regulatory landscape.

The study of formal regulation, often defined by the “hard law” of statutes and court decisions, is understandably baked into most current curricula. Since today’s businesses operate across borders, where legal standards can vary widely, it is fair to ask whether students are learning that compliance with a patchwork of regulations is not only challenging but sometimes impossible.

Future attorneys must grasp how to advise clients not just on compliance with hard laws but also on aligning with industry best practices, CSR commitments and ethical guidelines. This knowledge is increasingly relevant as courts and regulators sometimes look to self-regulatory standards when assessing corporate behavior in disputes. Future business leaders should be aware of the options for addressing shared challenges, particularly when the bad acts of one or two risk tarnishing the reputation of an entire industry. Business leaders trained in the pros and cons of industry self-regulation will be better positioned to advocate for its use when advantageous.

Increasing globalization presents challenges as businesses operate across multiple jurisdictions with varying legal standards. Law, business and public policy students must be equipped to navigate these complexities. By understanding international soft law frameworks, such as the Organisation for Economic Co-operation and Development’s guidelines for responsible business conduct, graduates will be better prepared to advise companies on global governance issues.

The business world is at a crossroads. With increasing scrutiny from consumers, investors and governments, companies are expected to go beyond mere legal compliance. Integrating industry self-regulation into the education of future professionals is key to fostering a culture of responsible business practices.

Law schools, business schools and public policy programs have a unique opportunity to shape the future of corporate behavior by teaching students the importance of soft law and independent industry self-regulation. By equipping students with the tools to understand and implement self-regulatory frameworks, educational institutions can play a pivotal role in promoting ethical and sustainable business practices for generations to come.

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