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FOREWORD

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In these times of change and great uncertainty, how can we as business lawyers foster resilience among those engaging in social entrepreneurship, impact investing, and sustainable development? That is the question the *Journal* and the Grunin Center for Law and Social Entrepreneurship at NYU Law set out to investigate at the symposium they co-hosted at NYU Law in October of 2025.

The quest for resilience, it turns out, is often a hard-fought battle that requires a willingness to ask hard questions for which there are no easy answers. So what do lawyers bring to this battleground? If not duking it out in a courtroom as many of our litigation-skilled colleagues are now doing, what use is a lawyer in times like these, particularly a business lawyer? By asking these questions, we waded, perhaps inadvertently, into a longstanding debate over what business lawyers have to offer to the world (and what they should stand ready to offer).

Over forty years ago, Ronald Gilson started his 1984 law review article, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, with a simple question: "What do business lawyers *really* do?"[1] With that simple question, he challenged prevailing views at the time of the value that business lawyers bring to the table. In his analysis, the role of business lawyers must be evaluated quantitatively. He even goes so far as to argue that "[i]f what a business lawyer does has value, a transaction must

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1. Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L.J. 239, 241 (1984) (emphasis in original).

be worth more, net of legal fees, as a result of the lawyer's participation."[2] Otherwise, he asks, why hire lawyers?

But how does a business lawyer add net value to a transaction? Gilson suggests that value-creating, business lawyers are those who act as "transaction cost engineers" and engage in "joint problem solving in which, through cooperation, the size of the pie, *and hence the size of the piece received by each party,* can be increased."[3]

That argument may be more persuasive in times of abundance than in times of scarcity. Moreover, today's business lawyers are not Gilson's business lawyers of the mid-1980's. Nor, with the advent of Artificial Intelligence, will they be the business lawyers of tomorrow.

Others have stepped into this conversation to offer other definitions of how business lawyers could and should add value. In 2009, George Dent was one of the first to challenge Gilson's characterization of the work of business lawyers.[4] Dent takes issue with Gilson's focus on a particular kind of business law practice, namely acquisitions, in which parties engage on an arm's-length basis in single, discrete, large transactions. Dent suggests that this type of law practice does not reflect what many business lawyers do. Nor, he argues, is it indicative of what most business lawyers were doing in the mid-1980s when Gilson formed his view of lawyers as transaction cost engineers.

Dent goes so far as to suggest that Gilson was blindly mistaken about what business lawyers do. Dent's words are harsh but his point is worth considering when he says that the acquisition-focused law practice informing Gilson's views

> [L]ies at one end of a continuum of business law practice that ranges across repeat transactions and relational contracts to internal transactions and non-transactional practice. Large acquisitions are not at all typical of most business lawyers' practice. Like the blind men touching the elephant, Gilson mistook a small part for the whole.[5]

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2. *Id.* at 243.
3. *Id.* (emphasis in original).
4. George J. Dent, *Business Lawyers as Enterprise Architects*, 64 BUS. LAW. 279 (2009).
5. *Id.* at 282.

Dent then goes on to argue that the better characterization of the role of business lawyers is that of "enterprise architects." By this he means, the value of business lawyers arises from their role in "creating the best entity structure for each enterprise."[6] He loosely defines enterprise by including not only corporations but also strategic alliances, joint ventures, and a myriad of other ways business relationships take shape. For business lawyers to create the "best entity structure," according to Dent, they must stand ready to advise on the issues that shape the form, management and termination of enterprises.[7]

What neither of these characterizations fully do, although Dent comes much closer to this than Gilson, is explain the role that business lawyers can have in contributing to more resilient systems, more resilient transactions, and, even, to the growth of more resilient lawyers. In these times, lawyers increasingly are called to be "resilient architects". That role is what the articles in this issue explore.

To use a more generative and nature-based metaphor than that of Gilson and Dent, the articles in this issue point to the meristematic nature of business lawyering.[8] In this vernacular, business lawyers do not lead with the tip of the spear. (We can leave that job to our litigator friends.) Rather, they carry the tissue necessary for growing the buds and shoots that deepen roots' hold on the earth, extend branches' claim on sunshine, increase the girth of trunks, and heal wounds. In short, they support the resilience required for the growth of both old trees and their new saplings.

The articles gathered here examine a range of tools and approaches for considering sources of resilience. They encourage new and more expansive ways of thinking about how to make good things happen in the world—from how the rules of the game are drawn and applied (formally through regulation and informally through soft law/emerging best practices) to how contracting parties engage with each other in the boardroom or at the negotiation table. And they wrestle with how

6. *Id.* at 299.

7. *Id.* at 299–309 (this includes, for example, advising on legal forms, scopes of business, governance models and practices, dispute resolution mechanisms, exits, and regulatory compliance, to name a few of the issues identified by Dent that enterprises must grapple with).

8. Meristems are those areas in plants that are composed of pools of undifferentiated stem cells that shape plants' ability to grow and develop in response to shifting environmental factors and nutrient availability.

to bring more voices into these discussions—particularly those most likely to be affected by the impact goals being pursued.

In a world of increasing adversity and aggression, the articles assembled here may strike a reader as surprisingly optimistic. This is not an exercise in fanciful or Panglossian thinking, however, as the authors of these articles are not naïve. The hopefulness that they bring to these articles is intentional and, at times, provocative.

Evan Absher, in his article, "Make America a Limited Partner Again," dares to ask a question that underlies many of these articles when he challenges the notion that times of uncertainty are necessarily bad. He asks "[w]hat if today's turbulence—policy shifts, public–private experiments, and legal disruptions—is laying the groundwork for a more robust and equitable application of social entrepreneurship's most innovative tools?"[9]

Equally provocative, in their article, "Beyond the Box: Reimagining Legal Agreements for Resilience, Alignment, and Emotional Intelligence in Social Enterprise," Kara Perry and J. Kim Wright challenge us to look to new ways of contracting, suggesting that "contracts should not only govern transactions but also reflect organizational identity, foster collaboration, and cultivate resilience."[10] They ultimately call for lawyers to "embrace contracts as dynamic tools that sustain mission-driven enterprises through complexity and change." This is a far cry from Gilson's lawyers as transaction cost engineers.

Lawyers, like Absher, Perry, Wright, and many of the other authors here, who choose to create or identify new stockpiles of resilience, are likely to envision the possibility of emerging from these challenging times at a new and better place. That is what resiliency calls us to do. The very word "resilient" is rooted in the idea of bouncing back, recovering, rebounding.[11]

Not surprisingly, the energy that springs from resiliency was present in the conversations that took place at last October's symposium. That same energy has not dissipated and, instead,

9. Evan Absher, *Make America a Limited Partner Again*, 22 N.Y.U. J.L. & BUS. 185 (2026).

10. Kara McCarthy Perry & J. Kim Wright, *Beyond the Box: Reimagining Legal Agreements for Resilience, Alignment, and Emotional Intelligence in Social Enterprise*, 22 N.Y.U. J.L. & BUS. 433, 434 (2026).

11. The term resilient comes from the Latin verb "resilire," which means to jump back or spring back to the original position.

has been carried to the pages of the articles and commentaries you are about to read.

This journal issue, as with the first journal issue (Spring 2025) co-hosted by the *Journal* with the Grunin Center, includes written commentaries. In doing so, scholars were paired with practitioners, and practitioners were paired with scholars. In many cases, these authors and commentators would best be characterized as "pracademics,"[12] given their commitment to work that bridges the divide between theory and practice. Three of the articles included here are accompanied by commentaries:

- *The Impact Observer*, by Nizan Geslevich Packin & Anat Alon-Beck (Commentary by Rosemary Addis AM)
- *The European Green Bond Market and the Path Forward for the United States*, by John Patrick Hunt (Commentary by Jesse R. Gero and Stephen Kim Park)
- *From Ambiguity to Application: Anchoring Impact-First Investing via UPMIFA in the Legal Doctrine of Program-Related Investments*, by Leslie Cornell (Commentary by Jill S. Manny)

These commentators do not always agree with the proposals offered in these articles. In doing so, they point out potential weaknesses or operational challenges that may make it difficult to implement proposals. And, in some cases, they suggest alternative solutions or a reframing of the problem to be solved.

Others have written about the challenges of bringing together scholars and practitioners to co-create knowledge. There is an inherent tension, they suggest, that makes it hard to create knowledge that is both rigorous *and* relevant, with scholars/researchers prizing rigor and practitioners requiring relevance.[13] Others argue, however, that when problems are complex, it is precisely this kind of engagement and inquiry that

12. The term "pracademic" has been in use for more than 30 years. Most often it is used to decribe people who straddle "practice and scholarship, industry work and research." T. Hollweck et al., *Pracademia: Exploring the Possibilities, Power and Politics of Boundary-Spanners Straddling the Worlds of Practice and Scholarship*, 7 J. Pro. Cap. & Cmty. 1, 3 (2022).

13. G. Sharma & P.T. Bansal, *Cocreating Rigorous and Relevant Knowledge*, 63 Acad. Mgmt. J. 386 (2020).

needs to underpin searches for knowledge.[14] Moreover, some of the complexities are hidden and can only be revealed when different stakeholders are brought into the conversation.[15]

In this issue, which intentionally brings a range of viewpoints to these issues, we seek to do just that. We are starting conversations across a range of mindsets and stakeholders. But these conversations require more. They require readers who bring their own perspectives to this discussion. As you turn the page, this is where your job as a reader begins.

14. G. Bammer, *Key Issues in Co-Creation with Stakeholders When Research Problems are Complex*, 15 EVIDENCE & POL'Y 423 (2019).
15. *Id.*