USING STRATEGIC MANAGEMENT PRINCIPLES, SHRM THEORY AND ORGANIZATIONAL THEORIES TO MAKE PRACTICAL, LEGAL, ETHICAL AND STRATEGIC EMPLOYMENT LAW RELATED HR DECISIONS

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ABSTRACT

Human resource management has moved from a specific, practice based tactical approach to a more macro/strategic approach. Along with this shift the ultimate goal becomes creating sustainable competitive advantage. Perceptions of organizational justice can lead to systems that foster human capital and OCB’s (Moorman, 1991) and these systems provide a basis for creating sustainable competitive advantage. SHRM theories examine complete HR systems and these systems should be designed to lead to organizational justice perceptions. Employer reactions to the law can be powerful symbols within the organization (Fuller, et al. 2000). However, HR response to the legal system (employment law response) is not included in the various SHRM theories. The legal aspects of HR are often dealt with in isolation – with a focus on compliance or avoidance. Legal responses should become a part of strategic human resource management and a model is developed in this research to incorporate these decisions into a SHRM model. In this model, positive synergy creation, through organizational justice perceptions, is used to achieve HR and organizational strategies and competitive advantage.
USING STRATEGIC MANAGEMENT PRINCIPLES, SHRM THEORY AND ORGANIZATIONAL THEORIES TO MAKE PRACTICAL, LEGAL, ETHICAL AND STRATEGIC EMPLOYMENT LAW RELATED HR DECISIONS

The study of human resources management has made great strides in terms of indicating the value of HR within organizations. Much of this progression has been attributed to the move from viewing HR tactically or even technically to viewing HR strategically. Human resources practices have been linked to strategic management through macro HR literature on such topics as bundles, internal and external fit/alignment, high performance work systems, the resource based view of the firm, strength of the HR system and knowledge based views of the firm.

According to Porter, Strategic Management is “a way of integrating the activities of the diverse functional departments of a firm.” “Strategy is also the act of aligning a company and its environment.” (Porter, 1991 at 96). As we move HR theory and practice towards strategy, we begin to align our HR practices in such a way as to meet organizational goals. When we make this transition, to become truly strategic in nature, the thinking surrounding HRM must become broader. We no longer think about each HR function, such as staffing or training, individually. Instead, we begin to consider how all of the HR functions will work in concert and how these integrated functions will help to meet broader organizational goals. At the same time we must consider how these integrated functions will affect and be affected by environmental factors. We must begin to think in terms of aligning all pieces of HRM and also aligning these with the broader organizations and environments within which we operate.

Porter perhaps makes this point best in reaction to Barney’s resource based-view of the firm. In response to the RBV, Porter ably points out that resources are only valuable in relation to external factors and that these resources can lose their value as external environmental factors such as buyer demands change. This will be a particular problem if we focus too narrowly internally. (Porter 1991, at 108) “The environment both constrains and influences outcomes which the more introspective resource view neglects.” (Porter, 1991 at 109)

In other words, strategic decisions require taking broad perspectives including looking at all factors within a firm (i.e. strengths, weaknesses and internal resources and capital) and external factors that may affect or be influenced by a firm (i.e. social, political, buyers, suppliers, opportunities, threats). Only when all of these factors are considered can we truly make strategic decisions. Even if we take the position that we are strategic in nature when we align departmental goals and actions such as HRM specific actions to broader organization goals, this will still entail looking at all internal and external factors. However, the definition of internal and external will change. In this perspective, internal factors will be those within the area of HRM and the external environment would then become the organization that encompasses the specific HR department. Factors such as organizational vision, mission and strategies, organizational finances, marketing plans, etc. would be examples of factors external to the HRM function. HR policies, the actual human resources (people) of an organization and the HR department itself would be examples of the internal factors in this scenario. We would still have to ask how the HRM resources will interact with these external (organizational) factors. Internal factors within a function would encompass the principles, systems, practices and policies within
that function. In addition, each function may have its own strategy, vision, mission etc. that is developed while considering the external factor of the organizational mission, vision, etc. We can differentiate between Porter’s broad strategy and this more narrowly focused strategy by defining Porter’s strategy as organizational strategy and this lower level strategy as a functional strategy.

Arguments can be made as to whether SHRM has advanced to the point of being one piece of organizational strategy or whether SHRM is more of a functional strategy. However, in either case if SHRM is strategic, the decisions that are made under this practice must be made with consideration to a broad group of factors internal as well as external. At a bare minimum in order to be strategic even at the functional level, HR decisions must be made while considering all HR related principles, practices, systems, policies, etc. while considering the external organizational factors such as corporate vision, mission, values, goals, strategies etc.

With a focus on these internal factors, SHRM in practice and research seems to ignore or brush aside the area of human resources management responses to employment law, or HR legal decisions. The responses to employment laws are clearly a part of an HR system. Harassment policies are HRM policies, as are FMLA policies, ADA policies, workplace safety policies, etc. If we are to truly be strategic we must realize that employment laws and HR responses to these laws are a piece of strategic human resources decision making and should be treated as such.

In this paper, we will present how and why legal HR decisions are a piece of strategic HRM. we will show the importance of these decisions to HRM through SHRM models and theories and through theories of organizational justice. We will also explain how legal decisions in HR have not been and are not being made in a strategic manner. Finally, we will propose a model for legal HR decision making to become strategic and will present proposals for further research.

**STRATEGIC HUMAN RESOURCE MANAGEMENT**

Strategic management is focused on determining why organizations fail or succeed. (Porter, 1991 at 95). The dependent variable of strategic management is organizational wide and as Mintzberg and Lampel suggest there is no reason that the independent variable should also not be the entire organization. (Mintzberg and Lampel, 1999). With this understanding, Barney is clearly correct in stating the purpose of strategic management is creating a sustainable competitive advantage. (Barney, 1991) To make it simple, we want to create a situation wherein our organization can be successful and can sustain this success. The independent variables are organization wide because we do not want to ignore any internal factor that could hinder or promote this success and we also cannot ignore external factors that may do the same.

To meet this goal, strategic management theorists and practitioners have come up with tools such as the SWOT analysis, a five forces analysis, and environmental scanning. All of these tools either explicitly or implicitly take into account external and internal factors and the interplay between these. In addition, these tools at least in part are aimed at making sure no important internal or external factor is left out of the strategic management process.

**THE MOVE OF HR RESEARCH TO A STRATEGIC FOCUS**
In recent years, human resource management research has moved from a specific practice based, micro or tactical approach (i.e. research on staffing, training, compensation systems) to a more macro, holistic approach. These macro HR models and theories and this stream of research have been termed Strategic Human Resource Management or SHRM. Strategic human resource management theories, by the very nature and term of being strategic, should encompass the goal of strategic management – creating competitive advantage. Wright and McMahan have defined SHRM as the pattern of planned human resources deployment and activities intended to enable an organization to reach its goals (Wright and McMahan 1992 at 298). This definition would seem to be in line with the definition of strategic management delineated in this research. Much like the strategic management tools discussed above, SHRM literature has led to a number of tools and theories concerning how to engage in SHRM to better meet organizational goals, to better compete, and ultimately to create competitive advantage.

SHRM literature has seen a progression (at least temporally if not theoretically) from examining best practices (Huselid, 1995), best fit (Baird and Meshoulam 1988); and alignment, (Wright et. al. 1995) (Youndt, et. al. 1996) to bundles of practices, (MacDuffie 1995), resource based views of the firm (Barney and Wright, 1998) and strength of HR systems (Bowen and Ostroff, 2004). If nothing else, at a minimum, these theories or models of HRM leading to firm performance all have a common synergistic explanatory variable. The purpose of these strategies is to work with and further higher level organizational strategies, therefore it is clear that there has been a strategic shift in the HR literature. There seems to be a consistent theme of creating some sort of synergy via our HR systems, practices, policies, and/or principles. However, we propose that all of these models and theories would be better served by adding to the theme of synergy.

EXPLAINING THE SYNERGIES OF THE DIFFERENT SHRM THEORIES

Bowen and Ostroff’s piece on strength of the HR system, suggests that consistency in our practices will create a stronger or clearer image of our HR system, and perhaps our organization, than the sum of each one of these individual practices. (Bowen and Ostroff, 2004) An analogy to this theory would be a bundle of twigs. If we have all of these twigs aligned in one direction, the strength of the bundle is much greater than the sum the strengths of the twigs. We could easily break each twig one at a time, but we cannot break the entire bundle. (You can also do this with a bunch of pencils to test the theory). There is a similar synergistic phenomena in the internal alignment literature, Huselid’s HPWS literature, (Huselid 1995) and in MacDuffie’s seminal piece on HR Bundles, (MacDuffie 1995). All of these suggest that certain HR practices will work together to create synergies. In all three theories of SHRM there exists a set or group of practices that work together to create value. The value of these practices when working together or interacting will be stronger together than taking the sum value of all of these practices individually. By making sure all of our HR systems are consistent, we create a synergistic effect, again much like the stack of twigs. As we move to external alignment, the practice of aligning our HR systems with organizational goals, the underlying theory is again to create a synergistic effect by having both the organizational systems and the specific HR systems working in the same direction. Much of the best fit literature suggests an even greater level of synergy by creating both internal and external alignment of our HR systems (Baird and Meshoulam 1988). Much of the more recent literature has focused on creating competitive advantages through the
internal resources of firms, including human resources. This theory is most often credited as Barney’s Resource Based View of the firm or RBV. This internal resources theory focuses on the strengths and weaknesses side of a SWOT analysis. Again, in RBV it is apparent that there is a sort of synergistic effect, this synergy is created through systems, practices, etc. that add value, that are rare, that are created in such a way that they are difficult to imitate, and finally that work within our organizational system (Barney and Wright, 1998). This reliance on a synergistic effect is even more evident when we look at the Complex Resource Based View of the firm. In this theory, a competitive advantage is created, but the exact source of the competitive advantage is not completely evident. This synergistic effect that leads to value and inimitability may be referred to as a combination of the causal ambiguity, path dependence, social complexity or the complex interaction of parts of the parts of our HR Systems (Colbert, 2004) but in the final analysis, the Complex Resource Based view of the firm is still using internal resources, policies, practices, etc. to create a synergistic effect. Even as this examination moves to a knowledge based view of the firm, this view still looks at creating a synergistic effect and therefore creating competitive advantage. For example, it is the hope that systems can be created via social and organizational capital that will create more value than the added sum of human capital in the workforce. If synergy cannot be created with human capital, then human capital would never be able to lead to competitive advantage. Competitors would simply be able to buy the smartest people in order to gain a level playing field. This same set of events would occur as we move to social capital, as it is the creation of these synergies that prevent our competitors from merely buying social linkages, aimed at destroying any competitive advantage that was created. With the move to a knowledge based view of the firm, much of our strategic HRM research does focus on the substantive creation of advantage through cognition or knowledge. We want to hire smart people, develop their intellect, both firm specific and general intellect, and create social capital and organizational capital that will lead to the sharing of this knowledge within our organization in such a way as to benefit the organization (Wright, Dunford and Snell 2001). Even within this knowledge based view of the firm, the aim is still to create a system that is more valuable than its parts, or in other words to create synergy.

While there is still debate in the literature as to which of the previously described SHRM theories is most effective, there is an underlying theme and commonality in all of these potential theories of HRM. All of these potential theories that lead to firm performance rely on a synergistic effect.

**GOALS OF THE SYNERGISTIC EFFECT**

After making a determination to create synergies within HR systems, a conclusion must be made as to what types of synergies are desired. When we create synergies these, can either become positive or negative synergies. We would want to create a bunch of twigs that prevent our organization from breaking apart, but we must be careful not to create a bunch of twigs that prevent us from breaking bad habits.

It is clear from the strategic literature that organizational systems should create value, rather than simply leading to additional costs within the organization. While this would seem obvious, it is not difficult to think of examples of strong HR systems that deplete value from organizations rather than adding any value. For instance, an HR system may contain staffing policies that are very lax or lacking in any type of real system or focus. Perhaps the staffing system contains no employment planning, poorly executed sourcing functions, and disjointed
selection practices. At the same time, the HR system may have weak or even non-existent training and development programs and may not worry about any type of motivation, or retention of employees. This type of HR system is very strong in that it sends a clear message. This system is sending a strong and consistent message that employees are not important. Further, all of the practices are consistent, in that they all lead to not getting the best employees either through internal or external systems. While this type of system is internally aligned in that all of these practices seem to be working in the same direction or are "supporting each other, “ it is a clear example of a system that has created a negative synergy (Baird and Mashoulem 1998).

If HRM is important at all to organizations, as has been suggested by research from Wright, Huselid, Barney, etc. then it is clear that the organization just described has not created any value through their human capital pool, and, therefore, their SHRM is ineffective. In this scenario a negative synergy is created, one which will lead the workforce away from the goals of the organization. Clearly, just creating any type of synergy is not enough of a SHRM decision to have any value.

With that in mind, the question then becomes, in what way do we want our HR systems to be strong, aligned, etc. In other words, in what direction do we want these strong systems to push our organization, and what types of synergy do we want to create. One such answer lies in the knowledge based view of the firm. These systems need to be aligned, or be strong in such a way as to create and store firm relevant knowledge (Wright, Duford and Snell 2001). Within this knowledge based view of the firm internal resources become the means to achieve the end result of organizational capital or knowledge. However, is this enough, or is there more that is needed from HR systems? Even if we have systems that will create and store knowledge, what will happen if this knowledge is never put to use. Not only is a human capital pool that has this knowledge needed but this human capital pool should also be motivated to utilize this knowledge to benefit the organization. One such desire from an HR System should be to create a human capital pool that is willing to engage in organizational citizenship behaviors or OCBs. OCB’s are defined as work-related activities that are discretionary, not directly or explicitly organized by the formal job description and formal reward system, and in aggregate promote the efficient and effective functioning of the organization (Organ, 1990). These behaviors would include utilizing one’s knowledge to improve the organization, being committed to the organization, willingness to provide discretionary effort, willingness to engage in overtime and so on.

Organizational Justice Theory tells us that OCBs may be created by convincing employees that the decisions about them have been made in a fair manner (procedural justice) and the decisions are actually fair (distributive justice). (Konovsky & Pugh, 1994) Organizational Justice literature also indicates that if employees believe there is a lack of procedural justice, they show less commitment to their employers, more theft, higher turnover intentions, lower performance, and fewer helpful citizenship behaviors (Folger and Cropanzano, xxii).

In order to create systems that lead to OCBs, these very systems must first lead to perceptions of organizational justice. What is meant by the term organizational justice and how is employee perception of organizational justice increased? According to Folger and Cropanzano, Organizational Justice includes two distinct components, procedural justice and distributive justice. Procedural justice refers to fairness issues concerning the methods, mechanisms, and processes used to determine outcomes. For example, these issues might involve considerations about the proper way to conduct a decision-making process, a dispute-resolution process, or an allocation process in an organization (Folger and Cropanzano, page 26). Procedural justice may also encompass a form of organizational justice known as
interactional justice. Interactional Justice refers to the quality of the interpersonal treatment received by an individual. (xxiii). Distributive justice is the perceived fairness of the outcomes or allocations that an individual receives (page xxi). These individuals are evaluating whether an outcome is appropriate, moral or ethical. While research has found that the effects of procedural justice tend to be much stronger than distributive justice (Moorman 1991,), it is still the sum of both procedural and distributive justice that leads to the overall perception of organizational justice. Therefore, if OCB’s are to be created within the organization, the systems in place must be perceived as fair methods of making decisions and the decisions that are made must be perceived as fair. These OCBs, in combination with the knowledge based view of the firm, will create value in the organization, perhaps even a sustainable competitive advantage, as synergies are created that add value, are rare, difficult to imitate, difficult to substitute for and work within the organizational setting (Barney and Wright 1998).

So what we find is that we want to have strong HRM systems that allow us to maintain and create knowledge that is valuable to our firm and allow employees to engage in their work in such a way that they are applying this knowledge and OCBs or discretionary effort in such a way as to meet organizational goals. However, when we turn to the lessons of Porter, Mintzberg, etc., we must be sure that all parts of this system are working in the same direction and we must be sure to consider all internal and external factors that may change the results of our practices.

THE IMPACT OF LEGAL/HR DECISIONS ON THESE GOALS/SYNERGIES

Fuller, Edelman and Matusik suggest that employer reactions to the law can be powerful symbols both within and outside of organizations. (Fuller, et. al 2000) Employees may view employer reactions to the law as legitimate efforts on the part of employers to recognize employee rights under the right conditions. Based upon this it is clear that employment or HR related responses to the law could have a profound effect on the synergies of the SHRM practices. However, there is little to suggest that these types of HR/legal decisions are a major consideration of SHRM.

All of the prevalent SHRM theories mentioned previously examine complete HR systems. These theories deal with HR practices, policies, systems and perhaps even principles. An analysis of MacDuffie’s bundles of HR practices reveals workteams, problem-solving groups, employee suggestions, job rotation, recruitment and hiring, contingent compensation, status differentiation, and training (MacDuffie 1995). Adding organizational justice to the equation, it is expected that under these SHRM theories the above policies should be created in such a way that they lead to perceptions of organizational justice. However, one area of HR practices, systems or policies that does not appear to be included (at least directly) is the HR or organizational reaction to employment laws. The systems that are put into place to deal with the growing body of employment laws are an integral part of an HR System. The principles we look to in answering how we will manage these laws are as important as any other HR principles. Indeed, perhaps these HR/Employment law practices are even more important than other HR types of practices as they flow throughout all other HR practices. However, managers tend to look at legal/HR systems, practices, policies, etc. in different ways than they would look at other areas of HR systems such as sourcing processes, motivation techniques, etc.

Under each one of MacDuffie’s HR Practices, a response to legal concerns as an organization may modify or change these practices. EEO laws alone may impact how
organizations are staffed, training methods and techniques, motivation processes, and many other HR practices. At the very least how HR managers react to these laws can impact every area of HR Management. Despite the emphasis of HR research and even HR practice on becoming more strategic, the HR response to the legal system is not viewed as an integrated piece of HR Strategy, much less organizational strategy. Rather, the legal aspects of HR are often dealt with as an isolated area of HR practice, with a focus on either compliance or avoidance with very little concern for the overall strategic impact of either approach. At best, the only organizational response to the law that could be considered as strategic response is when the organization looks at the direct costs and benefits of the law and their responses, but even then we really do not see the legal response as part of overall organizational or HR strategies.

SOME CURRENT DEFINITIONS OF HR-LEGAL DECISION MAKING

Roehling and Wright have defined one non-strategic response to legal issues as legal-centric thinking. Legal-centric decision making “gives primacy to legal considerations to the extent that other organizationally relevant, non-legal decisions are essentially ignored. (Roehling and Wright, 2003). For instance, employers may forego using a perfectly valid selection process out of fear that they may violate the law or even the fear that they may get sued, even if the suit would not have merit. Not only does this hurt the HR practice from a tactical standpoint, but we need to question how this decision may impact employees’ views of Organizational Justice. If this selection technique were indeed valid in that it better predicted job success, then it is expected that it would be perceived as a fair process (procedural justice). At the very least, we would expect to see that the hiring decisions would have more substantive fairness (i.e. the decision as to who to hire would be more accurate). By foregoing this selection technique, two opportunities were lost - one to increase perceived organizational justice and, in turn, to increase organizationally committed behaviors, and two to select employees that would create further synergies within our HR system. If the rest of the organization’s HR practices are geared toward creating organizational justice, then this HR/Employment decision has weakened the strength of the HR system. Further, it would be hard to imagine how this type of decision could have internal or external alignment. It is doubtful that the rest of the organization’s HR practices would be geared towards selecting the wrong employees or based around selecting the wrong employees. At the same time, it is difficult, if not impossible, to conceive of how HR could align to organizational goals by selecting the wrong employees. Further, it is unimaginable that a scenario where a practice that decreases perceptions of organizational justice and, in turn, organizational citizenship behaviors would align with the goals of an HR system or organization.

Edelman and Suchman point to two different methods that organizations use to react to employment laws. They define one method as materialistic and the other as cultural. (Edelman and Suchman, 1997)The materialistic reaction, is said to be strategic, in that the employer is worried about getting the most benefit out of laws that they can make money from and minimize the impact of those that cost them financially. While this reaction is strategic in the sense that there is some cost benefit analysis, it still lacks strategic sense in that it is not in any way aligned with the goals of the organization, or with other HR practices, and does not necessarily in any way relate to strengthening the HR system. This approach is only focused on the immediate economic outcomes of legal decisions rather than the long-term and broader perspective of legal decisions and their impact on organizational goals. The second approach defined by Edelman and Suchman is cultural. This method of reacting to the law is meant to allow organizations to
meet social expectations (Edelman and Suchman, 1997). In other words, legal decisions are made with a concern for how society would react to the decision. This perspective is broader than the aforementioned approaches in the concern for how public expectations will lead to longer term impacts on the organization. This cultural reaction is perhaps most closely aligned to the strategic decision maker, but this cultural reaction to the law is too externally focused and still does not address linking to organizational strategy or HR strategy. For instance, in some areas in the United States, social expectations may dictate that employers react to the laws surrounding equal protections and benefits by eliminating same-sex partners from coverage. However, there may be organizational level reasons to continue to provide these benefits. Under Edelman’s cultural approach, the societal factors would be the only consideration.

Legal-centric thinking or over concern for compliance with the law can be counter to the goals of strategic HRM, and Edelman and Suchman’s cultural and materialistic decision makers both lack a clear strategic focus. Another, non-strategic reaction to HR/legal issues is a legal minimalist reaction. We define the legal minimalist as the HR manager or organization that sees the law as a nuisance. These types of managers tend to do the bare minimum to comply with laws and often times when the law touches on an area of management these managers never go beyond legal requirements. In an organized setting these are the managers who consistently answer grievances with the phrase “Not a contractual or CBA violation,” while never getting to the root of the employee concern. Instead of avoiding practices out of a fear of violation of the law, they avoid practices because they feel they have met their obligations under the law and have no need to go any further.

Perhaps the best example of this type of practice would be in the area of workplace harassment. It is hard to imagine how any type of harassment can lead to production in the workplace, whether the harassment is based on a protected status such as gender or race, or whether the harassment is based on hair color it still has a negative effect on employees. In fact, the effect of any type of workplace bullying whether unlawful or not can have devastating effects on the Targets and the organization. Bullying and harassment leads to stress, absenteeism, turnover, and even workplace violence. However, it is not uncommon for organizations to do the bare minimum to eliminate harassment from the workplace. There are still a multitude of workplace harassment programs that are entitled “Sexual Harassment Policy,” often operating under the misconception that only sexual harassment is unlawful. Further, in preventing workplace harassment, there are many books and trade articles that tell employers what they must do to protect themselves from liability, but very few that talk about what employers could do to eliminate all harassment from their workplace. According to Anna-Marie Marshall, harassment policies or grievance systems as they exist today in many companies may actually be counter-productive to eliminating harassment from the workplace. These systems may often times redefine harassment in such a manner that many complaints are not filed and many actually harassing behaviors are never addressed. (Marshall, 2005). However, these policies will still provide employers with an adequate Fararigher defense in most cases. This meeting the burden perspective concerning workplace harassment fits into the definition of the legal minimalist used in this research.

The question is what does this legal minimalist perspective do in terms of SHRM? This type of system sends the message that the organization only wants to meet the minimum requirements because it is forced to. This system does not send the message of respect for employee rights, instead, it sends the opposite message. This would only add strength to an HR system that was focused on either minimizing employee rights or at least sending the message to
employees that their rights are not important to the organization, but rather are a burden on the organization.

Beyond, legal minimalist thinking in terms of harassment systems, we also see legal minimalist approaches to the law throughout organizations. This type of response to the law is perhaps best personified by Carrol’s immoral and amoral managers. Carrol defines the immoral manager as one who will look at the law only in terms of profits, and if it is profitable to break the law the organization will do so. (Carrol, 1991). Examples include Enron, Worldcom and Tyco. The amoral manager looks at the law as a requirement that must be met, but will not go any further than what is required. An example of the amoral management philosophy is contained in the book Reckless Disregard, which portrays the decision General Motors made to continue producing questionably designed school buses, despite loss of life, until the day the new law prohibiting this design specification went into effect. While the amoral and immoral manager may at first appear to fall under what is defined as the strategic legal decision maker, through cost benefit analysis, in the next part of this research, a clear difference will be shown. The amoral and immoral manager fail to create perceptions of organizational justice and are, therefore, not aligned with the organizational goal of creating competitive advantage.

A COMPARISON OF THE LEGAL-CENTRIC THINKER, THE LEGAL MINIMALIST, EDELMAN’S STRATEGIC AND CULTURAL REACTORS, AND THE STRATEGIC THINKER

Legal centric and legal minimalist thinking can both lead to a negative impact on SHRM. These types of reactions to employment laws may lead to a weakening of the HR system, may lead to policies that are not internally aligned with other HR policies, and that are not aligned to company goals. Both of these types of thinking may contribute nothing to the utilization of our internal firm resources, and also may inhibit the creation of knowledge and/or the creation of the perception of organizational justice and in turn organizational citizenship behaviors. Further, even in the cultural or strategic reactions defined by Edelman, et. al. the decision maker is still looking at the law in isolation rather than strategically. Roehling and Wright have suggested a different type of strategic legal decision maker that begins to establish a more effective path towards making these decisions. Under the Roehling and Wright model, the strategic legal decision maker considers the mission and values of the organization, the HRM practices of the organization, the legal considerations and bottom-line competitiveness. Under this proposed model, We suggest the strategic legal decision maker should go one step further and look at these decisions as one piece of the SHRM model as proposed below:
The question to be answered is, where does legal decision making fit into this process? If we examine the legal decision making as outside of the SHRM box, then what occurs is these decisions will moderate the impact of SHRM practices in producing knowledge and OCBs. This moderation effect can either be positive or negative. The second option is to incorporate the legal decision making process into the SHRM box. The legal factors around employment become a piece of the environment external to HR, but still factors that must be considered and considered in conjunction with all other external and internal factors in order for the decision to be strategic. Even at this point if we make the legal decision in isolation, it is no longer a strategic decision. The legal-centric thinker, the legal minimalist, and Edelman’s cultural and strategic thinkers would all see the legal decision as external to any other decisions. These legal decision makers all make the legal decision in isolation and are thus not making a strategic decision. Perhaps a better term for Edelman’s strategic decision maker would be a financial or capitalistic decision maker.

We suggest that we can look at the law as an external factor (environmental factor) in making our legal decision, but in order to be strategic we still need to realize that the reaction we make, the systems, policy or practice we put into place is an internal factor. When this system, practice, etc. affects the work environment it becomes a piece of our SHRM system and must be viewed as such.
When we make the legal decision in a strategic manner we are looking for synergies with the decision. These synergies may be made in conjunction with organizational strategies, or with HR strategies, but in either case like our SHRM theories the focus should be creating a synergy. We want our responses to the law to work with our other systems. From a functional strategy point we want our legal responses to work with our HR systems. From an organizational strategy point, we want our legal systems to work within our organization to drive us closer toward organizational goals.

The legal-centric thinker, the legal minimalist, and Edelman’s cultural and strategic thinkers would also place legal decision making outside the realm of strategic human resource management by failing to completely align this decision making with organizational goals.

**AVENUES FOR FUTURE RESEARCH**

The research on HR legal decision making is still in its infancy. The Roehling and Wright piece on legal centric thinking relies on a great deal of anecdotal evidence. Likewise, the Edelman and Suchman piece on legal decision making is more theoretical than empirical in nature. There are many questions as to whether there are indeed patterns of legal HR decision that can truly fit into defined categories such as legal centric much less whether we have identified these patterns. We have defined patterns of HR legal decision making (legal centric, legal minimalist, etc.) but are still a step or two away from being ready to test these assertions via survey or other quantitative methodology. We propose that a series of case studies would help get a better grasp on the legal decision making in HR departments. From these a directed case
studies we may be able to begin to identify clear patterns of legal HR decision making. After we have identified these patterns accurately we can begin to look for patterns of these practices and how they relate to variables such as firm performance and competitive strategy.

There are a number of questions that could be explored. First, we must explore whether there truly are patterns of legal decision making or whether legal decision making are made in unique patterns for each organization. We would then need to explore whether these patterns can be grouped into areas such as legal centric thinking, legal minimalist thinking, strategic (Edelman and Suchman's) and cultural decision making and actual strategic decision making (Roehling and Wrights and/or this model).

If we find identifiable patterns of legal decision making, we could then explore whether of not these patterns have an effect on SHRM. Does the legal centric or legal minimalist thinking lead to a weaker HR system. fewer OCBs, etc. ? We could explore whether there is a defined pattern of legal decision making in organizations that strengthens the positive synergies of an HR system. Finally, we could explore the reasons for specific patterns of HR decision making. For instance, are legal centric decision makers more likely to get their advice from outside counsel, or risk management experts? Do HR managers who do their own legal research engage in more strategic legal decision making or legal minimalist decisions? Does an organizations view of CSR impact whether managers engage in legal minimalist thinking?

CONCLUSION

In conclusion, it is the contention of this research that employment law decisions need to be an integral part of strategic human resource management. By including these legal decisions into a SHRM perspective, an organization will be able to create strong HR systems, perceptions of organizational justice and, therefore, both specific knowledge and employees that are motivated to use this specific knowledge through organizationally committed behaviors. This incorporation will lead to alignment with organizational goals and to strategic competitive advantage. However, the research at this stage is at best in its infancy. There are more questions that must be developed to even begin to understand the relationship of HR-legal decision making to SHRM. Empirical analysis in this area is expected to further substantiate the theoretical developments contained in this research.
REFERENCES


17. Roehling, Mark V. and Patrick Wright (2003), Organizationally sensible vs. legal-centric approaches to employment decisions with legal implications, CAHRS Working Papers Series, 03-10.


