THE FUTURE OF LAW AND ECONOMICS: A DISCUSSION

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THE FUTURE OF LAW AND ECONOMICS: A DISCUSSION

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Abstract

There are a several forces pushing on the law and economics (L&E) movement from different directions. The authors exchanged perspectives on trends in economics, and in particular the increasing mathematical formalization of economics, and their implications for the future of L&E in legal scholarship. The authors discuss strengths and weaknesses of the modern L&E movement, speculate as to where L&E might be headed in the future, and how potential pitfalls might be avoided. The exchange between the authors took place at Truthonthemarket.com and the blog posts have been compiled into this essay.

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There are a several forces pushing on the law and economics (L&E) movement from different directions that make speculation about the future of the movement interesting and raise a number of questions. I don't think I know all of the answers to these questions, but I thought it would be fun to write a series of blog posts that sketch out my tentative thinking on these general trends, identify some potential strengths and weaknesses of the L&E movement in its current form, share some thoughts about where it is headed, and hopefully stimulate some discussion. I've combined and done some light editing on the five blog posts I wrote at truthonthemarket.com, along with a response from one of the founders of the law and economics movement, George Mason Dean Emeritus Henry Manne.

Part I sets the stage by identifying some of the trends in the L&E movement, focusing primarily on the increasing trend towards mathematical formalization in economics, and their causes and consequences. Part II discusses in greater detail the implications of these trends on law and economics as a discipline, and its future in legal scholarship. Part III attempts to make some predictions about the future of law and economics scholarship in law schools in light of these trends, emphasizing the potential for empirical law and economics to mitigate the "retail" problem. Part IV raises possible institutional responses to these trends that might mitigate some the retail and detachment problems. Specifically, I sketch out some possible strategies for law schools to encourage relevant law and economics scholarship and train the next generation of scholars. In Part V, Henry Manne responds to the issues and predictions raised in Parts I-IV, emphasizing both the implications for these trends on the role of L&E in legal scholarship as well as the role of ideology in shaping the future of L&E. Part VI offers a brief response and concludes.

I. MATHEMATICAL FORMALIZATION, DETACHMENT, AND THE FUTURE OF LAW AND ECONOMICS

The issue of modern economics' relevance to the real world should be familiar to economists (or anybody using modeling or quantitative empirical methods) in the legal academy. I don't think there is much dispute about this trend so I won't spend too much time documenting it. For casual empiricists, check out the programs at the American Law and Economics Association Annual Meetings for the last several years, or the publications in the Journal of Law and Economics, Journal of Legal Studies, American Law and Economics Review, Review of Law and Economics, or other leading field journals. The trend is clear. A large and growing fraction of law and economics work involves formal

modeling or empirical models. Here is how Professor Kate Litvak describes, I think fairly accurately, the state of play:

> You can't do serious law-econ work today without either really, really knowing math, or really really knowing statistics, or really really knowing micro. If you can't do serious regressions, you must model. If you can't model, you must do serious regressions. If you make the tiniest noise about "excessive fees" or "bargaining power," be prepared to either model them in excruciating detail or show original data. Chatter on a vague subject of "markets" and "efficiency" is basically ignored.

I say "fairly" accurately because I would like to leave room for a few categories of work that I believe are still valuable to L&E scholarship but don't satisfy the formal mathematical modeling or econometrics requirement. For example, work that conducts detailed descriptive and comparative analysis of legal institutions and how they operate might fall into this category; so would some work in economic history. But there is no doubt that Litvak has the general trend absolutely correct: more formal mathematical work and more quantitative empirics. This is the same trend that has taken place in economics more generally over the past 30 years.

One consequence of the increase in formal theory and empirical work is increased specialization in economics, and therefore, in economic analysis of the law by economists. Most young economists graduating from top programs either model *or* do empirical work, but not both. It is also the case that the economics discipline has become specialized across fields in the sense that many disciplines do not "talk" to one another or across their respective literatures. I had this discussion with a financial economist the other day who was lamenting the lack of sophisticated in that field with respect to industrial organization economics. I suspect increased specialization has resulted in a similar detachment between many other fields in economics as well. There are many benefits from this sort of specialization. But I think it is now clearly the case that most job market candidates in L&E are either theorists or econometricians, not both. I suspect that law departments will tend towards hiring the econometricians because many lawyers are able to at least understand the intuition of regression models and read results but very few are able to read and understand theoretical models of the type published in top economics journals. But I suspect the days of the "general L&E" scholar who does theory, empirics, and dabbles in some legal doctrine are numbered.

Assuming that the modern economics literature is indeed trending towards mathematical sophistication, the most obvious and likely consequence is that L&E will become less relevant to legal and policy audiences. There are at least three possible avenues through which the increase in formalization could be costly for L&E: (1) Economists will do work that is detached from legal institutions and law and therefore less relevant (the "detachment" problem); (2) L&E scholars will do work that is very relevant, and maybe even very good, but legal scholars wont know about it or care about it because of the "translation" issues associated with the formal mathematics will prevent it from being retailed to broader audiences, (the "retail" problem); and (3) Informal L&E will be "crowded out" of the law school landscape as it declines in value, (the "crowding out" problem) and as formal scholarship moves away from law schools toward economics departments, traditional subjects of L&E scholarship will be left to less qualified scholars (the "I know STATA and can get any regression through law review editors with a catchy enough title" problem).

My own sense is that, at least right now, each of these three raises important potential issues for L&E. I should note that I'm certainly not forgetting that increased formalization and specialization might bring some important benefits to economics and to L&E specifically. I'll address the benefit side of the equation later. For now, I want to focus on some of the potential costs.

From my perspective, the most pressing of these problems is #2, what I've described here as the "*the retail problem*." The problem of economists ignoring the law and legal institutions is no doubt real and significant, as is the problem of legal scholars without sufficient training publishing empirical work (there is more "bad" empirical scholarship than modeling as statistical software packages lower the cost of entry for empirics but less so for modeling). Bad work will always be a problem and I suspect always has been and always will be. Perhaps the increase in formalization has made bad work of both types more or less likely. I suspect it has allowed room for more bad empirical work than would exist otherwise, but I'm not sure how large this effect is.

But what about the good stuff? The most important, and I think the most interesting, problem to analyze is what happens to the *good* L&E work — whether formal or otherwise. I realize their is quite a bit of subjectivity in determining what counts as high quality L&E work, but I think there are a lot of issues here than can and should be discussed: will high quality informal scholarship be "crowded out"? Has or will L&E become so formal and specialized that the "retail problem" will render the methodology useless to the

very audience that made it a success story by incorporating its insights into the law? Is that happening already in some fields? What efforts can be made to secure the benefits of specialization and formality while minimizing the likelihood of detachment from the traditional "legal" audience? Will L&E move to economics departments and out of law schools in 5 years? 10 years? What role can law schools and other institutions play in ensuring that L&E remains interdisciplinary and relevant? Should they be concerned with these trends at all? These are the types of questions I'll address below.

Finally, let me offer one last point of clarification regarding two issues I often hear conflated in the context of discussing the increased mathematical formality in L&E scholarship: accessibility and relevance. I hope the clarification will be useful at least in understanding my own thinking as I try to work through these issues. First, there is a ton of formal work, both theoretical and empirical, that is relevant. For example, many highly sophisticated empirical models are not accessible to the majority of legal scholars because of the technical skills required to meaningfully evaluate the article, but they easily pass the relevance bar. Equally, there are many theoretical papers that are relevant and important to policy and have important implications for the law but are not accessible in the same manner. It is not accurate or helpful, in my view, to describe formal mathematical work as irrelevant simply because most of the legal community cannot understand it at a high level.

On the other hand, there exists a plethora of highly formal theoretical work in economics and L&E that requires impressive modeling skills but is not relevant to much of anything in the way of solving any real world problems, producing testable implications, or policy guidance. Similarly, empirical work that fishes for, finds, and publishes any spurious correlation that survives a few specifications in STATA can involve complex empirical specifications, but not pass the relevance bar. Of course, as readers of legal scholarship well know, "informal" scholarship can also be simultaneously irrelevant and inaccessible, but I am focusing here on "formal" economics scholarship only for the moment.

II. WHY MIGHT THE MATHEMATIZATION OF L&E A PROBLEM?

In this Part, I'll try to make the case that the trends highlighted in the first post, despite the benefits of mathematical rigor and precision, should give L&E scholars pause. My sense is that the increase in mathematical rigor poses special problems for L&E for several reasons. The primary reason is that the historical success of law and economics turns at least in part of its unparalleled success at

the retail level. First and second generation producers of law and economics scholarship — think Director, Alchian, Coase, Williamson, Posner, Easterbrook, Calabresi, Stigler, Demsetz, and others — were able to "sell" important economic insights to lawyers, judges, policy audiences and the legal academy more broadly. Henry Manne took advantage of the power and accessibility of the economics insights from these L&E scholars by bringing them together at Economics Summer Camps to teach economics to law professors. The newly educated law professors would in turn, retail the power of economic thinking to law students. A similar process would take place with efforts to teach federal judges basic microeconomic theory through the George Mason Law and Economics Center programs which were also a brainchild of Henry Manne.[1]

In any event, the point is that much of the success of L&E owes to its success at the retail level. Antitrust is a wonderful example of the success of L&E. There is perhaps no other area where economic theory is integrated into the law. But even in areas where economics have not completely dominated the intellectual discourse, L&E has been an important voice in academic and policy debates in many areas of the law. Its voice is one that pushes for an understanding of how economic agents will respond to changes in the law, how markets work, and how markets respond to legal change. No matter whether one adopts the L&E worldview, as I do, I don't think there is much debate the L&E has added a significant and valuable perspective to legal discourse. Indeed, one can make the case that its impact has been mores strongly felt than any other interdisciplinary approach to the law. The recent trend towards detachment from the retail audiences, from this perspective, is a special historical development in L&E. It is also one that is quite troublesome from the perspective of an L&E scholar who would like to see the field retain its influence. L&E scholarship, it seems, is at a crossroads. The concern is not just that L&E scholarship as we know it will move to economics departments. After all, economics departments do not currently value much of the work that is done by L&E scholars. The concern is that L&E scholarship as we know it will disappear altogether.

So far, I've unfairly painted a picture of formal methods in economics as ruining L&E without any upside. This may appear odd coming from somebody who does some modeling and econometrics in his own research. So let me make sure I'm being clear. Mathematical rigor and formality is not without its benefits. Modeling can help generate testable implications. Mathematics can force out into

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[1] Larry Ribstein, *Henry Manne: Intellectual Entrepreneur*, in PIONEERS OF LAW AND ECONOMICS (Cohen and Wright, eds., 2008).

the daylight hidden assumptions and make explanations more precise in a unique way. Like any other tool in economic science, mathematical modeling can produce insights for some problems but maybe less so for others. It would neither make sense to claim that L&E left no room for the sort of detailed institutional analysis and exposition supplied by Alchian, Coase, Williamson, Klein, Demsetz, or Tullock than it would to claim that L&E should ignore the insights generated by careful theoretical or econometric work. Though I do quite a bit of econometric work in my own research, I do believe (perhaps to the chagrin of my econometrician friends) that there is still some important empirical work to be done in L&E that doesn't necessary involve large scale datasets and statistical analysis.

Frequently, discussions of the increased formality of economics also include the observation that it has become pretty easy to run a regression with modern statistical software packages. This is also an important development in L&E scholarship and empirical legal scholarship more generally. I agree with others who have observed that the reduced costs to doing empirical work has become a problem in L&E scholarship in the legal academy. It is certainly true that legal scholars will make improper use of econometric tools from time to time. It is also true that misuse of empirical methods is less likely to be prevented by the peer review mechanism. On the positive side of the ledger, conferences like the newer Conference on Empirical Legal Studies are doing excellent work to raise the bar for empirical scholarship. Similarly, economists may fall prey to the mistake of letting the tools and methods determine which questions they answer, perhaps because the tools and methods determine what is publishable in top journals, or produce models or econometric work that is of little relevance. Neither of these errors are particularly interested to me, though I suspect the incidence of both errors has grown dramatically over time with the increasing demand for empirical legal scholarship and also changes in economic science over the past 30 years.

While I've focused on the costs of formalization and specialization throughout this and future posts, I do not want to be misunderstood as leveling the "physics envy" critique at economists, e.g. that economists use modeling as a thinly veiled attempt to make their work look more serious or to adopt a complex language to increase barriers to entry (an accusation most lawyers should be familiar with). For instance, a significant portion of my own research agenda involves some theoretical modeling and econometrics. As an aside, I've always thought that particular rhetorical critique ("physics envy") was not very effective. Formalization clearly has both benefits and costs. The question I am

interested in is how this change in economic science will change L&E as a discipline — it has already started — and as we know it in law schools. The increase in mathematical rigor in economics has translated, not surprisingly, into work in L&E that also makes increasing use of formal modeling or econometric methods. One consequence has been something I described as the "*retail problem*":

> *L&E scholars will do work that is very relevant, and maybe even very good, but legal scholars wont know about it or care about it because of the "translation" issues associated with the formal mathematics will prevent it from being retailed to broader audiences, (the "retail" problem)*

In other words, increased formalization has meant that a larger fraction of relevant and high quality L&E work has become less accessible to lawyers, judges, and policy makers. A simple way to describe this trend towards increased formalization might be as a movement toward of L&E towards the prevailing methods and trends in its home discipline. One might question whether this is a problem at all. For the reasons discussed above, I think it is. And at the very minimum, this trend has serious implications for the direction the L&E movement is headed in law schools and in legal scholarship. Parts III turns to discussing some of these issues.

III. WHAT WILL L&E SCHOLARSHIP LOOK LIKE IN THE FUTURE?

The most natural question to start with, and one I've discussed a bit in prior posts, is whether there will be any L&E scholarship in law schools in the future at all? I think the answer is yes. But the L&E scholarship that comes out of law schools is going to look different. One possible change is that there is a plausible concern that formal L&E scholarship will be "crowd out" high quality informal scholarship and render L&E without any presence at the retail level. Under this scenario, the trend towards increased formalism is sustainable, formal theoretical and empirical L&E scholarship must be valued by colleagues despite the fact that most of them aren't interested in it or can't read it. A second, and I think more likely, scenario is that as formal L&E becomes increasingly detached from, and presumably less valuable to, its intended audience but also colleagues in the law school, L&E scholars will migrate toward economics departments and leave the legal academy behind.

I tend to think the second scenario is much more likely. I don't see the current trends as sustainable in the long run. To be clear, this is not a critique of

L&E scholarship per se. Highly formal theoretical and empirical work is highly valuable. The stale debate about whether formality in economics is good or bad on the whole held aside for a moment, there can be no serious claim that formal economic contributions, harnessing the power of mathematical precision, have increased our economic knowledge and been an engine of progress for L&E. The question I'm dealing with here is about the limits of this trend. I'm not sure how close we are to the limit. And that is worth discussing. Entry level placements and lateral moves suggest that L&E in law schools suggest that L&E is still on the rise. But what happens to L&E scholarship in law schools when L&E as a discipline becomes so detached from "the law" that our theories cannot be retailed to a general audience or the results of our research cannot be disseminated to the legal academy? What type of scholarship stays in law schools? Who migrates to economics departments? Does some scholarship simply die off, too formal for law schools and too interested in the law to get tenure at economics departments? Lastly, do these changes suggest any new and profitable opportunities for legal scholars?

Here are a handful of thoughts that propose some tentative answers to these questions.

A. Theory Goes But Econometrics Stays

First, I want to make an important distinction between formal modeling work and sophisticated econometric methods. I do not believe there will be many economic theorists in law schools (in the U.S.) in ten years, but I do believe that econometricians are going to be a part of law faculties for a long time. This is in part because of the rise of the empirical legal studies movement, which increases the likelihood that many legal scholars will be able to read sophisticated empirical work. Further, even for those legal scholars who cannot understand estimation procedures and instrumental variables, most can read regression results if the author takes some care to present them in an accessible manner. This just isn't the case for modern theoretical modeling. Any attachment, even a small one like being able to understand the results and intuition behind the econometric model, will allow a colleague to understand the value of the research. In short, empirical law and economics isn't going anywhere.

As Professor Larry Solum points out in his own blog post on the topic:[2]

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[2] Larry Solum, Legal Theory Blog, available at: http://lsolum.typepad.com/legaltheory/2008/04/wright-on-the-f.html (April 29, 2008).

> This is not to say that some law and economics subspecialities might not remain in the legal academy. As Wright notes, econometrics is part of a larger trend, the empirical legal studies movement, which draws on the methodologies of a variety of disciplines, including economics, sociology, statistics, etc. The cash value of empirical work is not in doubt, and the results can be presented in formats that are accessible to the mainstream of the legal academy. Over the very long run, it seems likely that most legal academics will acquire sufficient empirical training so as to be able to understand a regression and interpret the results of empirical work.

A look at recent hiring trends in law and economics at top law schools, I think, would bear this out. I can think of a few modelers who have been very successful on the entry level or early lateral job market. And the ones that have typically have either some econometric skills or doctrinal expertise to go with the technical modeling skills. On the other hand, I can think if a boatload of econometricians who have done really well on the market. Most recently, for example, that George Mason University School of Law graduate Jonathan Klick accepted a tenured position at Penn. This is due, in no small part, to the fact that empirical legal studies are in high demand in the legal academy and despite the mathematical rigor, less detached from the academy. My prediction is that in 10 years, every top 20 law school has at least one PhD trained or equivalent econometrician. So hiring committees, if you're listening, get ahead of the trend and keep loading up on those empiricists. Theoreticians with interest in empirical work will be fine too. The key is that the economist is producing work that is valuable to the legal community, can be retailed to general audiences (think judges), and can explain the primary economic insight of his model in 2-3 sentences.

B. Will "Law and Economics" Theorists Move to Economics Departments?

Solum sketches out a plausible migration of the formal L&E scholars to economics departments as their work becomes more detached from colleagues in the law school:[3]

> The path of migration might go: courtesy appointment becomes quarter-time appointment becomes half-time appointment with the end point being "zero time" in the law school. This path offers the "sophisticated

[3] Id.

> law and economics scholar" the opportunity to interact with colleagues who understand their models and methods, and relieves law schools of the opportunity costs of supporting work that increasingly has no "cash value" except within the community of subspecialists. Rather, that "crowding out" informal law and economics, the result might be to make room for economic work that is accessible to the legal academy.

Solum raises the possibility of the movement of formal economic theoreticians out of law schools as an opportunity for more informal law and economics that is more accessible to the legal academy. I'm less optimistic about this. I do not doubt that there will be more informal L&E scholarship done in law schools if the formal theorists are in economics departments and the econometricians are split between law schools and economics departments. The question for me is whether the new scholarship will be any good. Modern top 20 Ph.D. programs train economists, primarily, in the sort of formal modeling and econometric techniques we've been discussing. It would be odd for a graduate student of one of these programs to eschew these techniques in order to get a job on the law market where they value something else entirely. One answer could be the type of multi-disciplinary PhD programs Solum talks about in his own post. Or PhD economics programs like those at George Mason and Vanderbilt designed to produce legal academics.

But it seems to me that there is very little incentive for a junior entry level scholar in L&E to do this type of informal scholarship when empirical work is so highly valued. I worry that the only people left to do any "informal" L&E will be those that don't have sufficient training to do it at all. The fear is what we are left with as L&E scholarship is vague talk about "incentives," some hand waving about "efficiency," or incompetent empirical work. If that is the state of play, and describes the only L&E scholarship that is accessible at the retail level, those who care about the L&E movement have much to fear. It may be the case that without an organized effort to retail the new, informal L&E it will not have much impact on the law at all. But that is the best case scenario. In that world, the influence of L&E will eventually dwindle and the work of pioneers like Henry Manne and others will be undone.

C. A New Role for Translators & Collaboration

I conclude with two somewhat obvious points that I will not save for the next post. The first is that there will be substantial value for entrepreneurial translators in the legal academy who are able to understand theoretical modeling

and sophisticated econometrics and translate them into legally-relevant ideas. The question is where they will come from? They will have to have training to do this, but produce scholarship that is valuable to their colleagues to remain in the law school. Perhaps the joint degree programs at George Mason, Vanderbilt and elsewhere will produce academics with these capabilities. Or perhaps the future is the type of multi-disciplinary job candidate Solum has discussed. The second point is that these trends increase the returns from collaboration, with legal scholars working with econometricians and theorists to produce legally relevant work**.**

IV. POTENTIAL INSTITUTUTIONAL RESPONSES

In this Part, I decided to get a little bit more optimistic and focus on some potential solutions to the problems we've been discussing. In particular, what can be done to restore the "retail" component of L&E. I note here that this discussion presumes that retention of retail L&E is a good thing. Similarly, because L&E in the law school is conducive to the dissemination of L&E to relevant policy audiences it is also a good thing. I want to focus primarily on some potential institutional strategies that aim to minimize the detachment problem without throwing away the gains from specialization from having well trained economists engaged in L&E scholarship. There are several institutions than can play a role here, but I will start with the law schools.

A. What Can The Law Schools Do?

I should be clear that I believe the stakes are high here for L&E. There have been many important challenges to L&E in its development, and many critical moments. In his *Intellectual History of George Mason University School of Law*,[4] law and economics movement founder and pioneer Henry Manne cites to the revival of the *Journal of Law and Economics* at Chicago, publication of Richard Posner's *Economic Analysis of Law*, publication of Guido Calabresi's *The Costs of Accidents: A Legal and Economic Analysis,* and the first offering of the Economics Institute for Law Professors (which would later become inextricably intertwined with George Mason's Law and Economics Center).

I should make a small note about the last of those here that relates to the importance of retail L&E. The caretakers of the intellectual movement of L&E had these detachment concerns in mind from the very start. Manne notes that

[4] Henry G. Manne, *Intellectual History of George Mason University School of Law* (1993), available at: http://www.law.gmu.edu/econ/history.html.

preferences for initial invitations to the Economics Institute for Law Professors were given to schools with group applications, "the more the merrier."[5] This not only had the obvious effect of producing some L&E scholars by arming them with the tools of price theory, but it also increased the likelihood that economic concepts would be taught to law students. Less obviously, having L&E friendly groups at law schools (even if not producing L&E scholarship) had the effect of increasing the likelihood that economics-oriented job market candidates would be palatable to the faculty as whole. Moreover, the selection of Alchian & Allen's *University Economics* (which is surely one of the most influential books in L&E), which avoided much mathematical formality, was surely deliberate.

The institutional challenges facing first and second generation L&E pioneers were quite different from those facing L&E now. L&E was not an accepted intellectual movement then. It is now. L&E scholars were undervalued on the job market, making it relatively cheap to stockpile L&E talent at a single law school like George Mason. This is no longer the case. Top L&E job market candidates regularly score entry level positions at top 20 law schools. One of the most substantial challenges facing the earlier generation was to demonstrate the intellectual power of economics in solving problems relating to the law and institutions. The intellectual power over economics, and L&E, had to be marketed to a skeptical legal academy. Now, even those who disfavor economics now mostly accept that L&E adds value to modern policy discussions. The modern challenges are those faced by a more mature discipline, and are in some ways natural consequences of L&E's success. While the current challenges might be natural and the byproduct of a successful intellectual program, they are serious challenges. Indeed, this is a very important stage in the development of L&E.

So what can the law schools do in light of some of the issues we've discussed? To repeat, the primary problem causing the trend toward detachment from the legal academy is the increasing formalization of economics itself. There is not much law schools can do about that movement per se, and I'm not sure that they would want to if they could. The law school's mission here should be to encourage good L&E scholarship, whether it is formal, informal, empirical or theoretical. With respect to both formal economic theory and econometrics, law schools must find a way to encourage work that is likely to be relevant to the

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[5] Henry G. Manne, *How Law and Economics Was Marketed in a Hostile World: A Very Personal History*, in THE ORIGINS OF LAW AND ECONOMICS: ESSAYS BY THE FOUNDING FATHERS 309 (Parisi and Rowley, eds., 2005).

world that the legal academy lives in and reflects some careful thought about the law and legal institutions.

There are really two problems here. The first is encouraging L&E scholars to do relevant work. This can be a challenge for freshly minted Ph.D.'s who are preparing for an economics job market where there is a substantial premium on fancier mathematical elegance and real world relevance sometimes takes a back seat. The second is that formal methods might prevent law school colleagues from valuing L&E work that is also highly relevant. We want to take advantage of the benefits of formal methods while retaining relevance. Law schools can also play a proactive role in solving this second problem.

1. Encouraging Relevant Work

What can law schools do to encourage L&E scholars to do more relevant work? The first thing is to help produce the next generation of L&E scholars and influence the type of work that they do. I'm going to address that supply side issue separately (see below). Other than helping produce JD/PhD candidates that will join the legal academy, there are a number of possible strategies. Here are a few.

Hire Empiricists/ Econometricians. One obvious way that a law school can do this is to hire more empiricists than theorists. This is not to say that law schools should "give up" on L&E in favor of a more general Empirical Legal Studies movement. Empirical L&E is and should harness the insights from economics. This is its primary source of advantage over other forms of empirical legal studies. But the implication of this series of posts has been that the detachment of the modern economic theorist from the legal academy has already started, and is a trend that will continue. It is better for law schools to be ahead of this trend then trailing it.

But Don't Just Hire Any Econometrician. The key is that law schools want to hire L&E scholars whose work will be valuable and relevant to the legal community. Hiring committees wanting to be ahead of these trends should be looking for empiricists who know the law, are interested in it, and have an interesting and relevant research agenda. By the way, this is hard work by hiring committees and others can pay off. I don't mind saying that when I came on the academic job market this was the major hang up that most law schools I interviewed with were willing to share with me (at least, it was one of them). At the time, I was a freshly minted PhD with a dissertation full of economics papers

on shelf space contracts and vertical contracting problems. George Mason faculty members asked me over and over whether I was interested in the law, where my research agenda was going in 2 years? 5 years? I had to try to convince them that despite not having written ANYTHING yet about the law, I was interested. Plus I had to sell them that the tools I was using in my economics work had more general application. Luckily, George Mason is a receptive audience for that line of argument. While my answers must not have overwhelmed them, they were willing to give me a VAP to "wait and see" how things turned out. The point is that this type of questioning and really understanding your potential hires can help to identify economists that are going to do relevant work. You just have to ask them and then listen!

Encourage Collaboration. Collaboration is one way to recruit economists to work on problems that are relevant to legal institutions while also ensuring that the work reflect careful thought about those institutions rather than assumptions and modeling decisions that strip the analysis of relevance. I have in mind here combinations of economists and legal scholars across departments, but it can certainly involve economists in law schools. Of course, many of these collaborations arise naturally without any coaxing from the administration. There are a lot of incentives to collaborate in this fashion. I do think this sort of thing arises naturally at George Mason because of the intellectual environment. I can think of two co-authored projects that I've worked on that came about because of "hallway" conversations. But greasing the tracks for this kind of thing can't hurt. I'm not saying that the school needs to set up a bounty for co-authored work, but more subtle steps might be appropriate: have an L&E Workshop, bring in interesting speakers to that workshop and encourage faculty wide attendance, have non-economists collaborate with the L&E folks to decide who is invited to give what papers.

Hire Economists Who Can Teach Law Students. Of course, law schools want all of their professors to be able to teach. But my point here is that to the extent that law schools are concerned about detachment created by specialization and formality, there is nothing like an economist who can get up in front of a room and explain the intuition of his model, or his identification strategy, to a room full of non-economists. I get nervous when I meet economists who can't do this but can prove every proposition in Mas-Collell, Whinston and Greene.[6] Hyperplanes, fixed point theorems, instrumental variables and first-order

[6] Andreu Mas-Collell, Michael D. Whinston, and Jerry R. Green, MICROECONOMIC THEORY (1995).

conditions are all important. But a good economist in a law school environment ought to understand price theory (along with other things) and ought to be able to explain both economic concepts and his scholarship to general audiences. Hiring L&E scholars that can wholesale their ideas to non-economist colleagues, collaborate, participate in school's intellectual community, and retail economics to students, is a good way to avoid or at least minimize the detachment problem.

Encourage faculty to understand the relevance of L&E. The second problem is that L&E scholars doing formal but relevant work might still be detached simply because the work is too mathematically-oriented for attract the interest of colleagues. I'd like to think this would not be a major problem and that law faculties would be interested in important empirical work in their field or what insights economic theory could provide. Or that it could be solved by paying attention to the problems discussed above, e.g. integrating L&E faculty into the general intellectual activity of the law school, not letting your econometrician sit in his office and run STATA programs all day, encouraging L&E scholars to workshop their projects in-house as well as at economics conferences, informal workshops and lunches, etc.

On empirical work, I think the legal community at large is going to have to bear the burden of adjustment rather than the L&E scholars thanks largely to the success of the empirical legal studies movement of which empirical L&E is a part. Sophisticated estimation methods are simply part and parcel of this project, and they clearly add value to the scholarly discourse in virtually every area of the law. Even if non-economist colleagues want to dismiss this kind of work, or have the type of general aversion to quantification and measurement that is not uncommon amongst law students, good empirical work isn't going anywhere. Better for the law school to embrace it and work towards setting up an institutional culture which values this work. A good way to start is providing research support for your econometrician(s): funding for RAs, statistical software packages, and data. A second step is to make sure those seeking placements in peer reviewed economics journals know that there work will be valued at the tenure review stage.

B. Training the Next Generation of L&E Scholars

A separate, but obvious, implication of the detachment theme is that there is a profitable opportunity for the production of L&E scholars who will produce, translate, and retail accessible scholarship. This does not necessarily mean informal scholarship. It includes theorists and econometricians who understand

and are interested in studying law and legal institutions, and who also have the ability to communicate with both economists and legal academics. Competition among empirical L&E types in law schools will intensify as these methods increase in value and entry level JD/PhDs find homes at top programs. What about the theorists who are doing relevant and accessible work? That is, what about L&E scholars and economic theorists in the model of Coase, Alchian and Demsetz? What about price theory and the law in the spirit of Becker?

Who will train the next generation of L&E scholars? Notice first that this question was a critical one in expanding the original L&E movement beyond its first and second generations. Henry Manne has explained the importance of training economics graduate students, and avoiding precisely the detachment problem we've been discussing, to the Law and Economics Center:

> Another important part of the Center prospectus was the proposal for a specially designed law degree for PhDs or near-PhDs in Economics. At the time there was no organized program for the production of new law and economics scholars. There were, of course, a few people in law teaching who had advanced degrees in Economics. But some of them were too mathematical in their orientation to be of much practical use in the popular interdisciplinary work, since ultimately the value of this scholarship would be in its use to judges and practicing lawyers.…So there was not a reliable source of future law and economics scholars, and, unless such a source could be guaranteed at this critical stage, the field could easily fizzle out. This argument for producing future scholars appealed to a new law and economics enthusiast by the name of Frank O'Connell, a lawyer, who, as it happened, was the President of the then newly active John M. Olin Foundation**.** O'Connell presented the entire prospectus of the Law and Economics Center to Mr Olin, who himself then became an enthusiast for the field and agreed to fund five three-year fellowships for economists to attend law school under the Center's aegis. The existence of high-quality graduate students gave the Center a panache and an excitement that it did not have before – or after. Ultimately there were 33 of these John M. Olin Fellows at Miami and Emory, at least 16 of whom ended up in academia, a pretty good percentage even for Harvard or Chicago but almost unbelievable for Miami and Emory.

So who will be this generations George Mason or Emory? Here are a few possible answers:

The George Mason / Vanderbilt Model. The George Mason model is still alive and kicking. Indeed, the George Mason Law and Economics program still produces some excellent joint degree JD/PhDs along with the GMU Economics Department, and also offers Levy Fellowships to PhD candidates seeking a law degree at George Mason. Jonathan Klick, who recently accepted a tenured offer at the University of Pennsylvania from Florida State and is widely considered one of the most exciting young empirical L&E scholars in the nation, is the pride of the Levy Program and by far its biggest success story on the academic market. Vanderbilt's new Ph.D. program in Law and Economics offers a similar model with a slightly different emphasis and curriculum than George Mason's Ph.D. program (Vanderbilt lists its principal fields as including "behavioral law and economics, risk and environmental regulation, and labor and human resources"). But the model here is the interdisciplinary model in a manner which addresses some of the "detachment" problems that we've discussed by housing the training of the student in the law school and being mindful of the production of scholarship that is important to the legal academy.

In-house Training. Another possibility, and one that might deserve further discussion, is that the next generation of L&E scholars are already in the legal academy and just don't have the economics training. The logic is that if the economics departments don't care about law or law and economics as a field, we ought to train them ourselves (see above). But what better source for bright scholars that understand the law than law school professors themselves? Some might not have the mathematical chops to make it through an economics PhD program. Some might but might not be interested. Fine. No offense taken. But it strikes me that the subsidization of legal scholars interested in graduate economics education would be a great investment. I know some schools do this some of the time. But it strikes me that this might become a more popular approach in 5 years than it is now. Anybody out there having some PhD economics training subsidized by their institution and want to talk about it?

Professor Solum's Multi-Disciplinary Model. Solum raises the related possibility that law schools take over the production of the next generation of scholars interested in L&E (and other things) and other interdisciplinary methods. Here's Solum on what this model would look like: **"**If law were to follow this path, it would require the creation of multidisciplinary PhD programs in law that introduced future legal academics to empirical legal studies, positive

legal theory, formal legal models, normative legal theory, advanced doctrinal methods, and so forth."[7]

Nobody. Sigh. This is the option where L&E withers off and disappears from the legal academy altogether as formal work migrates to economics departments and even the empiricists are viewed as "detached." I assign a low probability to the extreme version of this option, but a slightly higher probability to more moderate (but still unattractive) versions of this story where bad informal L&E crowds out the good and the mathematical stuff disappears to economics departments.

C. The Olin Foundation is Gone. What's Next?

There is no doubt that Olin Foundation money was at the heart of the success of the growth and development of the L&E movement. Steve Teles' Rise of the Conservative Legal Movement goes to great lengths to explain the role of this funding in spreading the gospel of L&E. With the Olin Foundation money all wrapped up, and L&E standing as a mature discipline in the legal academy, what role can other institutions play in making sure that the L&E movement doesn't unravel while its influence on policy discourse slowly dies? I have three ideas I want to raise and that I hope start some discussion.

Academic Law and Economics Centers. There are a number of law and economic (or similarly oriented) centers housed at law schools around the country: UCLA, USC, George Mason, Texas, Stanford, Berkeley, Chicago, Harvard, and Yale all have them. As do others. I can't think of any that are more active than Northwestern University's Searle Center on Law, Regulation, and Economic Growth where I've had the pleasure of participating in a number of programs over the past year or two. But they've got what I think is the right model. One of the themes of Steve Teles' *Rise of the Conservative Legal Movement*,[8] and a theme that comes up frequently in discussions with first and second generation L&E scholars, are just how important the early Liberty Fund meetings and similar workshops and conferences were. The informal, "research roundtable" format bringing together lawyers and economists to discuss specific topics is one that has been highly productive in L&E in large part, I think, because of the collaboration of people and ideas at these events (many of which result in co-authored papers, research projects, etc.). But law and economics

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[7] See Solum, supra n. 2.

[8] Steven M. Teles, THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT (Princeton University Press, 2008).

centers can play a critical role in sponsoring these types of events and reaching out beyond hosting the in-house L&E workshop. It is also a useful way to attract and recruit young economists and PhD students to the problems that we think are important.

Embracing the Young Economists. I think one of the biggest potential solutions for L&E moving forward is not simply avoiding detachment of current L&E scholars but bringing in new blood that is interested in doing relevant and important work. We've talked about some of the solutions. But those solutions all assume that the trend within economics is a given. But we can relax that assumption and open the door to some new possibilities. For example, we might not be limited to accepting the fate of having to "train our own" next generation. Maybe we don't have to give up economics departments doing the training. L&E needs to find a way to re-market itself to young economists and graduate students and convince them that its problems are important. Economists want to do relevant work. At least most do. I promise. Right now, L&E is just unpopular in economics departments. There is a premium in economics right now is for clever and creative solutions that use a lot of math, whether theoretical modeling or estimation.

But there is no reason not to embrace what is good about formal economics. That is something that I've repeated as a theme through these posts. Specialization is good. And advances in econometric techniques have allowed more powerful insights into causal inference (I'm thinking about panel data techniques). Formal math gets a bad rap in L&E sometimes. It can be misused. But so can the written word. Check out a few of the top law reviews. You think economists are the only ones who use language to camouflage hidden assumptions? Or show off their skills in the chosen language at the cost of accessibility to a general audience? Please. But new formal techniques are not all window dressing. They have benefits than can be used to create insights relevant to L&E and the world that we live in.

Geoffrey Manne made this point in a comment to a post I wrote about some of the critiques that were going around about "cute-o-nomics," and the perils of this sort of empirical work. Toward the end of his comment, he hones in on the exactly the tradeoff we've been discussing involving elegant mathematical economics and sophisticated empirical strategies and L&E:[9]

[9] See http://www.truthonthemarket.com/2007/04/25/angrist-on-levitt-instrumental-variables-identification-and-defending-cuteness/#comment-99613 (April 26, 2006).

> The folks like Levitt who do this work, who can perceive problems and think through creative solutions to them, are applying real economic intuition. They may use a lot of math, to be sure, but the underlying logic is generally quite simple (not as in "easy" but as in "not-complicated") and complex mathematics is not necessary to explain or to understand what's going on. It is economics in the style of Tullock and Alchian and Coase. These are real lessons learned through application of a powerful system of analysis. In contrast, too much of economics today seems to be little more than mathematic gymnastics. It is largely devoid of real fundamental understanding of human behavior and of the analytic power of a few simple rules to explain it. The debates don't turn on seemingly fundamental questions like, "how well does this explain observed behavior?" Rather the debates are about the elegance of complex models and the proper use of this variable or that equation. Important endeavors, to be sure, but hardly deserving of more accolades than the work of incisive "natural" economists.

That's a great explanation of the problem, but also the promise of harnessing some of the really great talent coming out of economics departments if we, being the legal academy and interested institutions, can convince them that we've got problems worth solving. And we do. But we are failing to solve a marketing problem. L&E needs to be marketed to the economists. We've got interesting problems to solve. Economists want to do work that matters and that is read. Notice how many of these folks write popular books and blog? Don't tell me they don't want to influence large audiences and participate in relevant policy debates. And there is an upside to this trend in empirical economics to use clever identification strategies and instruments to get at causal relationships — even if one can sensibly argue that there are some tradeoffs between cleverness and relevance as well. Here's what I wrote in defense of Levitt a while back when he was getting some heat from economists about his "clever" research agenda:

One might think that at least one important consequence of Levitt's research agenda, in addition to adding to our economic knowledge (which used to be enough, didn't it?), will be a contribution to making popular again economics that is more connected to explaining real world phenomena of all types with economic intuition, models, and data. If that happens, Levitt isn't ruining economics. He'll be saving it. Or at least he'll be making it more relevant. And definitely more fun. If Levitt is going to take the brunt of the attack for "clever" research, at a minimum, we ought to be willing to give credit for

sending the pendulum back towards the empirically-oriented side of the spectrum by making it "cool" to worry about the real world again.

L&E institutions ought to be embracing the economists and graduate students and getting them interested in L&E problems. Let's invite promising economists to conferences, workshops, discussions, for coffee. Let's fund some dissertations. Let's make it cool to do L&E in economics departments. Maybe it is impossible to get *American Economic Review* or other leading journals to publish the kind of economics that will have a lot of influence in legal circles. Maybe. But *American Economic Review* isn't all there is to economics. I really think law schools and legal scholarship have a lot to offer young economists. I think a better pitch needs to be made to recruit economists to come pay attention to our problems. And those interested in the future development of L&E ought to try to improve that pitch.

Training Judges. I only know what I've read about the programs at George Mason's Law and Economics Center and Henry Butler's (now running the Searle Center, which hosts the Brookings Judicial Education Program) program. Judicial education is one of the unequivocal success stories of the L&E movement. Large fractions of the judiciary have come to these programs because they are interested in learning basic microeconomics. Educating the judiciary in basic economics might be one of the most important functions of the L&E movement. At least, it is a critical part of L&E's success at the retail level. These programs seem to be moving full speed ahead and remain very popular. While I have no reason to believe that these programs will slow in the near future, one might suspect that detachment would eventually take a toll on the demand for judicial education as well to the extent that economics' influence on the law declines. It strikes me that maintenance and expansion of these programs, as well as programs to train interested law professors in economics, should be at the heart of the institutional mission to continue the healthy development of L&E.

IV. A RESPONSE FROM HENRY MANNE

I found some very thoughtful, even profound, points in your series, but I also found some weaknesses. In the same spirit in which you wrote your ideas, I offer you some passing thoughts on the subject. I have by no means sought to make an orderly response to your discussions, nor to be exhaustive of the many interesting topics you raise. You will just have to sort out for yourself the parts that are relevant for your purposes and those that may do no more than reflect the musings of a never-satisfied old warrior. I might add that this was written in

haste (will repentance follow?), and I reserve the right to change my mind tomorrow.

First I want to examine your right-on delineation of the problem as resulting from too much mathematics and over-formalization, the accessibility problem. I was somewhat surprised to find you never mentioning one salient fact in this issue, that the task of a law school is to prepare students for the practice of law and to do the kind of scholarship (research) that serves an instrumental social benefit within the area of law professors' expertise. I am afraid that your approach to this has been somewhat distorted by your own training and expertise, a problem that afflicts most academics. You show an unmistakable tendency to want to protect the value of the skills that you have. Thus you make what to me seems a somewhat surprising defense of econometricians in law schools (I'll discuss this point later). Now please understand that I do not criticize you personally for this, for that is exactly what I tried to do starting in the 1950's, i.e. utilize the skills that I had and to increase the demand for those particular skills. I was fortunate that there happened to be a convergence between my approach and what worked for the law schools of that time. As you and I agree, Law and Economics has been of extraordinary value to legal education. It took it out of the doldrums of anti-intellectualism and mechanical thinking about law, and made law schools respectable partners in the greater role of universities. That was no small development, and I do not think that it is in any immediate danger of being reversed., though sometimes, when I see the quality of what some law professors pass off as Law and Economics scholarship, I wince and think that perhaps the old style law schools were better since at least they could at least pass the Hypocritical test of doing no harm.

But to get back to my main point, I really do not think that we should be bothering in law schools with either teaching or research that in some ways does not make for better lawyers or for better legal scholars (not necessarily the same thing, but again there is convergence in the long run). I do not see any reason for the law reviews to be full of arcane economic jargon that will never be used by any practicing lawyer or comprehended by any sitting judge (with some very rare exceptions). And here I get to my main point. I think that most of the problem which you and I agree exists is the result of the very peculiar "market" forces that operate in universities and not from any thought-out rationale of making better laws or lawyers. (See my "*The Political Economy of Modern Universities").* In other words, it is part of the general pattern of professors writing for each other and not for the outside world. That was not the thrust of the original L&E approach. Rather the original approach was simply a marginal

(jurisprudentially speaking) movement from what most legal-realist-oriented law professors were already doing but, alas, doing very badly. They were trying to explain why one rule of law was better than another (and that did implicate eventually some need for econometrics to be able to do a careful cost-benefit calculus; thus I do not reject your emphasis on the importance of empirics, but I may disagree with you on who is best positioned to do it), but the focus was always on improving the law and not on showing the methodological skills of the authors. This was the intellectual victory which revolutionized the law school world, and it was all because of one thing that you rightly note; that is the power of economics, vastly greater than that of any other discipline, to resolve what had appeared to be purely normative issues in a positive way. It was the introduction to this kind of power that opened the eyes of many law professors back in the 1970s, and which I think still has the power to amaze people (including, alas, many economists) who are not familiar with economics' great analytical powers. Of course, here I mean the kind of economics that you were first taught and which I internalized into my very soul at the feet of Aaron Director, Armen Alchian and Harold Demsetz.

And that gets me to a central point, one very dear to my heart but one which I am afraid that you have missed. I think that the major problems now, as they were fifty years ago, derive mainly from the ideological left. I believe that the causes forcing L&E out of the law schools today are the very same ones that operated to prevent my getting better jobs in the 1960s and for most senior law professors to think that what I was advocating was sheer nonsense, "to the right of Genghis Kahn," as they used to be so insipidly amused at repeating ad nauseum. They were protecting their intellectual investment in skills and ideology against the threat of a new paradigm in which they could not share the rents, and I do believe that that is exactly what is still happening. While you and I see enormous social benefits from a legal system based on the idea of property rights and their protection, all they see is less role for the government and themselves. Perhaps this acts at an unconscious level, but it unmistakably is at work whatever the source of the peculiar leftist ideology of most academics.

What I am saying is that it is impossible to separate completely a discussion of the role of L&E in legal education from the ideological aspects of the subject. I honestly believe that at some level the turn of L&E to econometrics and empirical work is a flight from the implications of a thoroughgoing Alchianesque kind of economics, the kind that for a while came to be identified almost perfectly with Law and Economics. Perhaps that is even more clear with the current popularity of Behavioral Economics, and of late I even notice in the

literature a somewhat open attack on the very idea of freedom of contract. I do not think these developments are accidental or random; I believe that they are inherent in the very structure of modern universities and law schools, and I, therefore, suggest that perhaps you are looking in the wrong direction for a solution to the problem you describe.

Certainly economics faculties, though they have much less motivation to enter the public arena than do law professors, are better situated to do the economics of law than are law professors, who mainly have a very different kind of educational mission. Even if policy-oriented scholarship is not popular with them at the moment (other than perhaps in IO), that is not part of the concern of law schools (we don't see Biology and Economics in Biology departments just because the economists happen not to be doing that kind of work), nor do I think it is the job of law professors to make significant advances in economic theory (though this is not to disown my own and a few others' claims to have done just that). They should utilize the insights of economics at the level at which it works for lawyers and judges, and that is all (it is a lot) that economics should be in law schools. As for empirical work, I like your idea of emphasizing collaboration and translation; that is probably the most meaningful kind of interdisciplinary work; but I see a fairly limited role for law professors in that (largely explaining to the empiricists what factual issues need measuring and what legal implications they might otherwise misunderstand). Blame the structure of universities (and the rarity of academic entrepreneurship combined with imaginative foundation work) for the lack of real interdisciplinary centers where such work might flourish.

I always thought that my idea of economics for law professors was vastly more important than the idea of economics for judges. I still think that, and I also still think that Armen Alchian's *University Economics* (and a few newer works) is the approach that makes sense in this task. But if that is not to be, and L&E is to go the way I see it at the moment (and we agree on most of that), then I would just as soon see it totally disappear from the law schools, though I do not really think there is much chance of that happening.

V. A BRIEF REPLY TO DEAN MANNE AND A CONCLUSION

Henry Manne has graciously offered a reply to my thoughts on where L&E might be headed and why. While Henry and I agree on many points concerning the problems facing L&E and what might be causing them, I interpret his post as raising two major points of disagreement. The first is that I largely

ignored issues of ideology and their role as a force pushing modern L&E out of law schools. That is fair enough. I agree with this point in the sense that I don't think there is any doubt that the shift in the content of modern L&E toward empiricism, behavioral law and economics, and theoretical modeling is consistent with a theory that those forms of L&E are likely to be much more acceptable to the political left than the L&E scholarship of the previous several decades.

But I want to offer brief rejoinder concerning our second point of disagreement, the role and future of empirical L&E in law schools. Henry describes my defense of empirical L&E in law schools as "somewhat surprising," and notes correctly that a large fraction of modern empirical L&E suffers from the same retail problems described throughout the series. But I think we largely, but not completely, agree here as well. For instance, we both agree that some empirics play an important role in L&E. We also agree that without the retail component of L&E there is really no basis for L&E to remain in law schools, that is, economists or social scientists in other departments would be better situated to do it. Finally, we agree that there are some important differences between modern empirical L&E and the empirical L&E of the past several decades both in terms of technique and tone. In terms of technique, there is no doubt that methodological changes have shifted (consistent with the general trend in economics) in favor of less accessibility. Comparing modern empirical scholarship to the original empirical L&E (e.g. Stigler), it is tempting to focus solely on the differences in the mathematical sophistication of the methods.

But there is also an important difference in terms of tone. What is most surprising to me is that modern empirical L&E scholars seem to be much less interested in retail in terms of judges and the general legal audience. One might suspect that blogs, as a complement not a substitute for legal scholarship, would facilitate this kind of retail (again, think *Freakonomics*[10] or Justin Wolfer's work). And of course, there are all sorts of noteworthy exceptions. But my casual sense is that empiricists seem much less interested in retail than the used to be. Which brings me to my main point. I do not believe that the choice must be made between sophisticated methods and retail. This is a post about economics by an economist, so I'm certain to tell you that there are tradeoffs! But I do believe the success of books like *Freakonomics* with the general population provide some evidence that these methods *can* be retailed in various forms (articles,

[10] Steven G. Levitt and Stephen J. Dubner, FREAKONOMICS: A ROGUE ECONOMIST EXPLORES THE HIDDEN SIDE OF EVERYTHING (Harper Collins Publishing, 2005).

workshops, books, monographs) to judges and legal scholars in ways that make the work accessible, in sufficient detail that the reader can understand intuitively what is being done, and without sacrificing sophisticated methods. This last part is important. These sophisticated methods take a lot of heat for their formality and inaccessibility. They shouldn't. At least not on those grounds alone. To the extent that these methods allow us to more reliably and more accurately identify causal relationships, magnitudes of effects, etc., we should be willing to embrace them *so long as* the empiricists embrace L&E by investing in retail.

Perhaps I'm wrong about this. Or perhaps I'm just hopeful as a matter of self-interest. But in my humble and perhaps overly optimistic and admittedly self-interested view, the technical advances in econometric methods do not require empirical L&E to abandon retail. I guess at the end of the day my view is that if the modern empirical L&E scholar cared enough about it, and they ought to, then some retail of L&E would remain possible. Perhaps they don't. Or perhaps some of the various legal institutions that care about L&E at the retail level should target some of their efforts at increasing the production of accessible empirical scholarship (or collaborations, or translations). In any event, I thought these final points were worth sharing.