THE FIRE OF TRUTH: 
A REMEMBRANCE OF LAW AND 
ECONOMICS 
AT CHICAGO, 1932–1970*

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FOREWORD

The distinguished group of economists and lawyers who responded to the call of the Law and Economics Center at Emory University and the Department of Economics of the University of California, Los Angeles, to participate in a conference on the "Intellectual History of Law and Economics" did not take the time to attend merely because they were interested in a small corner of intellectual history. They were very much concerned with the future of economics, the future of the United States, and the future of free societies of men and women. Among the participants were Milton Friedman, Nobel Prize winner in economics and now public educator, journalist, and advisor to governments; George A. Stigler, then Charles A. Walgreen Professor of American Institutions at the University of Chicago, emeritus, and now director of the Center for the Study of the Economy and the State, University of Chicago, and Nobel Prize winner in economics; Robert H. Bork, then Alexander Bickel Professor of Public Law at Yale and now Judge, United States Court of Appeals for the District of Columbia Circuit; and Richard Posner, then Lee Brena Freeman Professor of Law at the University of Chicago and now Judge, United States Court of Appeals for the Seventh Circuit. The many other participants, although less publicly known, are equally able and involved in our society.

These men and women gathered to provide a written record of something that happened many years ago, largely but not exclusively at the University of Chicago. They gathered to bear witness to a story and to create a source document so that some future student of men and ideas

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might gain some insight into how people, ideas, universities, and societies interact. They also had another purpose: to pay tribute to two extraordinary teachers, Aaron Director and Ronald Coase, the first two editors of the Journal of Law and Economics.

The reader should not look here for a cold and impartial evaluation of law and economics, or of economics at Chicago, or of the ethical merits of capitalism. What the reader will find here, however, is something that is not to be found in the voluminous publications of the assembled participants. The reader will find a celebration of two great minds, of the joy of others in discovering the power of their insights, and candid revelations of the awkward process of struggle by which sincere and patient minds find their way to a better understanding of the complexities of our social lives. The period covered by the discussion is approximately 1932–70.

The discussion was chaired by John Moore, then professor of law and economics at the Law and Economics Center of Emory University and now associate director and senior fellow, the Hoover Institution, Stanford University. He asked me to open with some observations on the academic and intellectual background of the discussion. Because I had agreed to edit the proceedings, I had prepared some remarks, unlike the rest of the participants.

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Kitch: Legal realism is a movement that arose in American law schools in the 1920s with the announced program that legal scholars have a calling to investigate the operation of law in relation to social reality. Legal scholarship and legal thinking were criticized by the movement as conceptual, doctrinaire, and confined to what judges say the law is as opposed to how the law actually is, how it actually operates and affects the behavior of people in society.

Its origins have been traced to themes in the writings of Holmes and Pound. Jerome Frank, Underhill Moore, William O. Douglas, and Karl Llewellyn have all been identified with the movement.

Robert Maynard Hutchins, who became president of the University of Chicago in 1929 at the age of thirty, had seen the ferment of the realists during his years as a student at the Yale Law School and his one year as dean. It created great excitement in the law faculties at Yale and Columbia.¹

¹ These events have been chronicled by John Henry Schlegel in American Legal Realism and Empirical Social Science: From the Yale Experience, 28 Buffalo L. Rev. 459 (1979), and American Legal Realism and Empirical Social Science: The Singular Case of Underhill Moore, 29 Buffalo L. Rev. 195 (1980). Schlegel starts from the assertion that "As a coherent intellectual force in American legal thought American Legal Realism simply ran itself into the sand." It is a mistake to confuse the intellectual demoralization of some American law
In retrospect it appears to have been a rather polycentric intellectual movement. It did not lead to any well-defined understandings on methodology or subjects of inquiry, and by the late 1930s it had faded from the scene. These people were clearly groping about, trying to implement a general vision of what it would mean to study law as it actually operates in society. Underhill Moore at Yale undertook a study of parking regulation.\(^2\) Karl Llewellyn at Columbia teamed up with an anthropologist, E. Adamson Hoebel, to record the legal legends, the legal myths, and understandings of the Cheyenne Indians.\(^3\) Toward the end of his life, Llewellyn wrote a very elaborate book which attempted to describe the conventions and customs of judges in dealing with precedent.\(^4\) It imposed an elaborate typology on those customs. The only thing that seems to tie these people together was an agreement that conventional legal scholarship as it had been practiced by their predecessors was inadequate and provided an insufficient understanding of the way law works.

It is clear that legal realism made people in law schools open to the social sciences, indeed, to any and all social science: psychology, economics, sociology, political science, anthropology. No one was sure which if any of the social sciences might prove helpful, but there was a willingness to try any of them. In the years that followed, American law schools were to try them all. That environment was receptive to the introduction of economics into a law school.

Are there any more concrete and immediate connections between legal realism and the development of law and economics? One can speculate that the movement of Robert Maynard Hutchins from Yale to Chicago brought legal realism to Chicago and led to a receptiveness to the social sciences in the law school at Chicago. As far as I can tell from the few documents I have examined there is no evidence that Hutchins as president had a significant impact on the intellectual atmosphere in the law school at Chicago.\(^5\) I would like to hear from the people who were there at the time whether or not that is correct.

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faculties with the conclusion that the movement had no influence. As the events retold in this transcript illustrate, many people in American law teaching have been patiently attempting to pursue the central aspirations of legal realism for years. A broader perspective is offered in Edward A. Purcell, Jr., American Jurisprudence between the Wars: Legal Realism and the Crisis of Democratic Theory, 75 Am. Hist. Rev. 424 (1969).

\(^2\) Published as Underhill Moore & Charles C. Callahan, Law and Learning Theory: A Study in Legal Control, 53 Yale L. J. 1 (1943). Schlegel, supra note 1, at 264–92, chronicles the work on the parking study at length.


\(^5\) The most obvious connection between Hutchins and the law school was the appoint-
One connection between legal realism and law and economics at Chicago that I have found runs from William O. Douglas to Wilbur Katz, professor of law and later dean of the University of Chicago Law School. William O. Douglas in 1929 wrote a very typical legal realism piece which was published in the *Illinois Law Review*. It was not a substantial piece. It was called, "A Functional Approach to the Law of Business Associations." It was a call for a departure from categorization—what he called theology, or the classification by business types: partnership, corporation, and so on—to a functional approach. The article is quite unhelpful in telling the reader what this actually means or how it is done. I can give you some of the flavor by quoting from it: "The analysis was directed to the basic factors at issue. The economic and social forces at play were examined. The emphasis began to shift from the vehicle employed to the function performed; from the form of unit to empirical facts, from a static theology to postulates stated in terms of human behavior." It was a call for a new approach to the field. From a review that Katz published in 1940 of what was to become for a period the leading casebook in the field, we can gather that Katz regarded this Douglas article as an important methodological call. Indeed, in 1931, Chicago made a handsome offer to Douglas of a professorship, an offer which he first accepted but then rejected.

Katz was also involved in discussions at Chicago in the last half of the 1930s about a four-year law curriculum. This was a vision of the law school curriculum that was put into place for students who would come to the law school without a B.A. As I understand it, many of the students arrived in this program without a B.A. It reflected the atmosphere favorable to acceleration at Chicago, spurred on by Hutchins, who had as a general theme of educational criticism that the pace of educational pro-

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6 23 Ill. L. Rev. 673 (1929).
7 Douglas, * supra* note 6, at 675.
grams should be more finely tuned to the interests and talents of students, who should not be required to follow a rigid, lockstep program of curricular development. The idea of the four-year curriculum was to make law school available to students before they had done the full four years of the B.A., if they had the talent for it and the interest in doing law. In thinking about that proposal, it became clear that if students were to arrive at the law school without the full four years of the B.A., then one would want to provide them in the law school a less specifically professional training and more general grounding in background subjects that would complement the study of law. At the end of the 1930s the University of Chicago law faculty put forth and actually implemented for a number of years the four-year curriculum in which the additional year of study—spread out through the program—was to include the study of subjects other than the traditional professional law disciplines, and among those was to be economics.\(^9\)

This proposal was disrupted by World War II and the post–World War II environment, in which there was a very heavy demand for professional education, and by the hostility of colleges to a program that asked them to send their best students on to Chicago early.\(^10\) But the influence of legal realism meant that when the faculty looked at what the complementary subjects were that the students should study along with the traditional, formal law courses, the social sciences were very prominent, economics among them. It was the practical need to teach economics in the law school that led to the appointment of Henry Simons, an economist, as a professor of economics in the law school in 1939.

MANNE: The realists, of course, were responding to the changing nature of what was expected of law and lawyers. The kinds of problems that courts were being increasingly asked to address did not allow the simple reliance on precedent to resolve issues, as had been characteristic of the

\(^9\) Wilbur Katz, A Four-Year Program for Legal Education, 4 U. Chi. L. Rev. 527 (1937). There were antecedents for this approach in an environment where many law students came to law school without the B.A. See Alfred Harsch, The Four-Year Law Course in American Universities, 17 N. C. L. Rev. 242 (1939).

\(^10\) Edward Levi has said of this program: "The New Plan for the Law School on which Wilbur Katz and Malcolm Sharp worked so hard in the thirties, and which helped to spawn most of the developments in legal education since that date, took considerable time. It was that new plan which expanded the horizons of the School to include such radical subjects as economics and accounting. But it did not stop there. It included sociology, criminology, and comparative law. It thought legal history was important. It introduced the tutorial system which, when another law school adopted it, was considered invented. It emphasized jurisprudence and ethics . . . . As with all new plans, it was later modified, but rather more in its structural elements, I think, than in its goals." Edward H. Levi, Reminiscences, 3 U. Chi. L. Alumni J. 23, 26 (1977).
nineteenth century. The early development of law and economics may have been a response to this demand.

Kitch: A concrete example of that in the case of Katz was the passage of the Federal Securities acts in the early thirties. Katz recognized immediately that one effect of them would be to require lawyers to be much more familiar with accounting and that that would lead to a need for teaching accounting in law schools. He saw accounting as a subject closely related to economics. His vision was that since the federal government was becoming more actively involved in economic management the modern lawyers would simply have to know more about how it was done, and that lawyers would have to be taught the basics in law school.

Blum: I want to build on Ed’s point about the four-year program in the law school. I was part of the four-year program. It is true that the four-year program was built on the notion that there would be a number of subjects other than law taught in the four years. They were interspersed throughout the program so that I had a course in accounting—given by Wilbur Katz, incidentally—a course in psychology given by Mortimer Adler, a course on economics by Henry Simons, and a long sequence on business, the law of business organizations, and business regulation.

It is, I think, correct to say that Wilbur Katz was interested in the realists. It would be hard to classify him as one of the realists. Early on he had taken the point of view that the reason why precedent no longer worked in the court system as well as it had in the past is that the courts were taking on jobs in which decision by precedent was not sufficient. So it was necessary to have some kind of additional technique, and that meant that lawyers had to be more broadly trained, at least so that they would know how to deal with experts from other disciplines. He did not expect that lawyers would become accountants, or economists, or psychologists, or psychiatrists, but that they would know enough to deal with them in a courtroom or adversary situation.

Wilbur frequently made the point that the legal realists had ignored the role of the legislature throughout most of the time that legal realism flourished. He pointed out that laws were drawn up by legislators who were politicians and that they knew very well what was going on in the world and that they were indeed the realists.

In addition to the idea that lawyers should learn about other disciplines for professional reasons, Katz also had the notion that as lawyers learned more about other disciplines this would over a period of time influence the way the law developed. He thought, for example, that as lawyers began to understand accounting better they would have different reactions about what the role of securities law might be or how securities law might be drafted. As lawyers understood more about economics and were called
upon to deal with economic problems, particularly in the administrative agencies and in connection with legislation, they might want to move in different directions than they had been moving in the past. So during the time I was in law school, Wilbur was very much concerned with such things as the role of farm price supports, the National Recovery Administration, the effect of minimum wages. Although these subjects were not in his field, he thought that it was necessary to get a handle on them to understand what the economic implications were of the laws that were on the books or were about to be passed.

Wilbur was very active in getting Henry Simons to talk with members of the faculty who were interested in this approach to law and to legal education. It was Malcolm Sharp and Wilbur Katz who were most influenced by the fact that Henry Simons was around the law school.

MoorE: George Stigler, could you comment on the role of institutional economists in all of this?

Stigler: Not even my best friends have been institutional economists, so I don’t know the field well. First of all, I don’t know where one starts a history of a subject like this. When Adam Smith discussed the economics of the primogeniture system, that seems to me like a traditional analysis by a competent economist. And when John Stuart Mill and Marshall discussed land tenancy systems—while they were obviously plagiarizing Cheung [laughter]¹¹ they were addressing some economics to what were institutional and legal questions.

The German historical school had big names in it like Roscher and Schmoller and Vogner. All had treatises in which there were books devoted to legal institutions—the institution of property, the institution of the family, and so forth. If you look at them—I haven’t gone through all of them—it is my impression that you will be dissatisfied with them on the ground that they were largely descriptive rather than analytical. But they weren’t discriminating against law and institutions. That’s the way they treated economic subjects, too.

American institutional economics is an offshoot of the German historical rebellion which also spilled over into a historical school in England. If it has a single intellectual leader, I suppose it was Veblen, who somehow rallied around him a large number of people whose common unifying theme was a great dissatisfaction with neoclassical price theory or indeed formal theory of any sort. Veblen himself played the game that institutions evolved and that the evolutionary consequences and structure of legal and economic institutions were important. But on the whole, legal institutions were unimportant to him. He was almost Marxian, I believe,

in his belief that the legal institutions adapted to what was going on and were not basic, driving forces. Then around him were all kinds of schools, many of which I have never read because I have never felt quite that masochistic. John R. Commons wrote on the legal foundations of capitalism in a book that I believe is impossible to read. Clarence Ayers started a school in Texas that never got beyond the state lines [laughter]. Wesley Clare Mitchell, who was a friend in a sense—and once a student of Veblen—joined his antitheoretical propensities to a strong interest in and preaching for the quantitative method, indeed, the agenda of the National Bureau for Economic Research.

I would say the institutional school failed in America for a very simple reason. It had nothing in it except a stance of hostility to the standard theoretical tradition. There was no positive agenda of research, there was no set of problems or new methods they wanted to invoke. If you go to an older man like Veblen in the 1890s or 1905, or if you go to Allen Gruchy in the forties or fifties, they are all saying, "Look at these theorists, they are abstracting from the deep complexity of the social fabric and of the intricacies of a complex human nature," and so forth. But they are never saying, "What shall we do next?" So I would say that the school died as completely as any school can die in the sense that it has no viable influence on even the successful schools and no current and important successors.

MOORE: Jesse Markham, can you add to that?

MARKHAM: George Stocking, a student of Veblen's, was once my chairman. When I went to the Federal Trade Commission, I took the place of another institutionalist, Corwin Edwards. Both Stocking and Edwards had, if not a hostility, a deep mistrust for the simplifying models of economics, and yet there was nothing to put in its place other than a tremendous amount of description. I agree with George.

DEMSZETZ: That manner of looking at problems is embedded in a lot of the industrial organization literature that predates the work of most people in this room, the literature of the industry studies. They were studies that did not seem to have any driving hypothesis that was being tested and that were geared to going out and sort of feeling the elephant and seeing what could be deduced from merely feeling the elephant, and there wasn't much that was deduced from it. But it is a style that, although it is not formally connected to, say, the Ayers school, persisted beyond it and still does persist to some degree.

If my old friend and ex-colleague Reuben Kessel were here, as he

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12 John R. Commons, Legal Foundations of Capitalism (1932).
should be if he were with us.\textsuperscript{13} he would say that it even carried over to much of what goes on in econometrics where there is pure estimation of coefficients without any real theoretical push behind the analysis. All of that is linked together in a propensity to describe in detail which derives from this institutional bent, I think.

\textsc{Zerbe:} It seems to me that the area where the institutional influence perhaps lingers most strongly is in the area of labor economics and labor law.

\textsc{Friedman:} So far as Wesley Mitchell was concerned, the way in which the institutional attitudes affected him very much, I think, was in his view of the history of economic thought. When I was a graduate student at Columbia I took his course in history of economic thought, and his emphasis was always on the effect of institutions on what people were thinking, running from the institution to the thought, not the other way around. He was a great admirer of Veblen and, as George says, like the rest of them professed a great skepticism about pure economic theory. But I believe that his interest in the problem of business cycles, in particular, kept him from being as empty of content as most of the people in this group were.

I would share the view that institutional economics was empty as a part of economics. But I do not share the view that the people who participated in the institutional movement failed to have a very important influence on a lot of things. John R. Commons, for example, has had very little influence on the development of economics as a discipline, but he had a tremendous influence on the growth of many legal institutions, principally through his disciples at Wisconsin. Ed Witte was a major mover in constructing the Social Security Act. Selig Perlman at Wisconsin was a leading labor economist and felt himself very much a disciple of John R. Commons. I spent a year once at the University of Wisconsin, and the influence of John R. Commons was oppressive.

\textsc{Kitch:} I have a question for George Stigler. I get confused about what is or is not institutional work and whether when you say an institutional school died out what you're really saying is that flawed institutional work died out. For instance, why isn't Milton's \textit{Monetary History of the United States}\textsuperscript{14} an example of a very well done institutional study?

\textsuperscript{13} Reuben A. Kessel, professor of economics in the Graduate School of Business of the University of Chicago, died in 1975 at the untimely age of fifty-two. He was one of the important members of the group of economists at Chicago in the 1960s, discussed \textit{infra}. His collected essays have been published as \textit{Essays in Applied Price Theory} by Reuben A. Kessel (R. H. Coase & Merton H. Miller eds. 1980).

STIGLER: It is, if you define institutionalism as the recognition of real phenomena which you are trying to cope with or explain, whether the phenomena happen to be historical, as they usually were in Adam Smith’s form, or statistical and quantitative, as they often are in modern form, or both, as they were in Milton’s case where he looked at legislation and governmental acts and also at quantitative series.

I hate to think that a word like institutionalism should expropriate what is legitimate empirical concern in a substantive science. Economics is not a formal science. It is a substantive science dealing with economic phenomena. The phenomena, if they come in, can be called institutionalism, but I don’t find that very rewarding. The person who makes a detailed study of the trading rules on the board of trade and gives an explanation of why they have daily trading limits and things like that and margin requirements that change in certain ways is studying a subject that, on any reasonable view of things, is an economic institution or practice. But so what?

FRIEDMAN: The institutionalists would have rejected a great deal of what is in the Monetary History because much of that was counterfactual history. It was an attempt to say what would have happened “if,” on the basis of economic analysis. From the point of view of the approach of the institutional school—which was a methodological approach (the reason they have died out is that they were methodological and not substantive) —that was an utterly invalid way to examine the course of history. You had to look at it from the point of view of what actually happened, and the idea of substituting an abstract economic theory in order to spin out some speculations (as they would have described them) about what might have happened would have seemed to them utterly inappropriate.

KITCH: So the methodology required that you report only what happened, in a completely neutral, flat, and . . . .

FRIEDMAN: No. No. No. No! See, you’re now getting normative. The institutionalists were highly normative—all of them. Take John R. Commons as a leading example. But no. The point was a different one. It was, as George says, primarily the complaint against abstract economic reasoning. You should report what was going on, not in terms of abstractions, but in terms of realistic insights related to human institutions.

KITCH: But to the extent I know Commons, there is a motivation in his work that also comes from a set of abstract theories—concepts of oppression, unfairness, and so on.

FRIEDMAN: Nobody can avoid abstract thinking. But the institutionalists were a specific attack on a particular class of abstract thinking. That class of abstract thinking which took profit maximization as a central element, which treated human beings as rationally directed toward the maximiza-
tion of profit. That was the form of abstract reasoning to which they were objecting particularly.

Wallis: In line with that last remark, we have to notice that what seemed empirically to blow away the institutionalists like dandelion fuzz was Keynes's General Theory.15 All of a sudden the very same people who opposed all abstract reasoning were seizing upon it because it supported the conclusions for which they had previously thought there was no theoretical basis, and the very same individuals (I suppose Alvin Hansen is the most striking case) jumped from being institutionalists to being abstract theorists.

Posner: Among the antecedents I think you should mention Jeremy Bentham. Not only because (as far as I know) he was the first economist of nonmarket behavior but also because utilitarianism has certainly been an influential way in which judges, lawyers, and law professors have long thought about legal problems. It has increased the receptiveness to modern economic thinking among these groups. They have often thought in rather similar terms.

Becker: I think we should distinguish between hostility to neoclassical theory and institutional economics. I think the hostility has come from many sources. In labor economics, and I think partly in the industrial organization field, there was considerable hostility to the neoclassical assumptions or neoclassical models and an emphasis on what was actually being done, but much of it didn't contain the heavy emphasis on historical evolution that I think one finds in Commons and to some extent in Veblen. I don't think we should lump all hostility to neoclassical reasoning into institutional economics.

Moore: Let's turn now to the early law school efforts. Are there connections between modern work at Yale and the earlier legal realists there?

Bork: I think some mistaken appointments is the main link [laughter].

Manne: Are you referring to yourself or others?

Bork: Well, there are two of us here [laughter].

Manne: There was an early economic institutionalist at Yale, Walton Hamilton, whose appointment at the Yale Law School (if I'm not mistaken) predated that of Henry Simons at Chicago. By the time I was a graduate student at Yale in fifty-three no one seemed to remember the episode. Rostow referred frequently to the fact that there had been an economist there, but that was about as far as the references ever went. I don't believe Hamilton had any kind of direct influence on anyone on the Yale faculty.

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BORK: He taught legal subjects more than he taught economics.

BOWMAN: I think that Walton Hamilton—some people wouldn’t say he was an economist and I might be among them—had a tremendous influence on Thurman Arnold and they were very close friends. When Thurman went to the Antitrust Division he took Hammy with him, and Hammy was a real influence on Arnold and his program. That program later got (one might say) debunked by Henry Simons.

STIGLER: I was going to say something for Columbia, my old school. If I were asked to name the single most important thing that’s ever been done in collaboration by a lawyer with an economist in the United States I think I would pick Berle and Means.16 Means was hired as an unsuccessful blanket manufacturer in some kind of research center at Columbia. He never had an appointment in the economics department. He wrote a book on the holding company17 and then the famous collaboration—although I don’t think it was really a collaboration—with Adolph Berle in which each did his section. They planted once and for all the idea that the two hundred largest corporations in America are bigger than the other biggest corporations [laughter] and that the ownership and control of the modern corporation are wholly separated from one another. It has entered into the culture in a way that could probably never be fully eradicated.

MOORE: Although Henry Manne has done his best.

MANNE: I think the key to that is what George said, it was not truly a collaboration. There’s not a single sentence in that book that joins together the thrust of the Means contribution with the thrust of the Berle contribution. Their chapters are occasionally interspersed, although, indeed, the heaviest part of Means’s work is the first half of the book and Berle’s the second half. They don’t seem to have really known each other.

DEMSETZ: Did you tend to get this development of legal realism and economic institutionalism at a time when the legal apparatus, either legislative or judicial, had more interventionist objectives? Was that the propelling force of these developments in the 1930s? It seems to me that abstract price theory imposes disciplining constraints on interventionism by highlighting the indirect effects in a way that those who want to intervene would like to be without. To deny the theory and its relevance is one way of getting a freer hand to do what you want to do.


Moore: Of course, interventionism goes back further—think of the Interstate Commerce Act (1887), the Federal Reserve Act (1913), or the income tax amendment (1916).

Demsetz: It all seems to have gotten started in this country around the turn of the century and then picked up momentum during the thirties.

Friedman: But surely, Harold, the high tide of institutionalism in economics in the United States was the 1920s, not the thirties. It is certainly true that the main figures in institutional economics were people who believed in intervention in one way or another. It may well be that part of their interest in institutionalism and their objection to theory was what you are saying, but it surely preceded the 1930s.

Bork: There was certainly a parallel to that in legal realism. That had a heavy political content, and it was mostly to the left. The object was to free people of a system and prove that law at bottom was politics and that the really important question was "Whose side are you on?"—and I know which side they were on.

Demsetz: I think the developments of the 1920s were politically motivated, although I didn’t mean to link them to the depression of the thirties. They set the tone and the antecedents for the people who were put in power during the thirties. The antitheoretical bent of it is, I think, explainable by the desire to be shorn of the constraints that the theory did impose on political action.

Priest: I think the principal interest of the legal realists was not in theory at all but rather in politics and their interest in empirical work derived solely from their failure in the twenties and before to influence government or influence legal policy by other more traditional, normative methods. They turned to empirical work to try and develop some technique for influencing policy in a way that they had failed to do before. When the political climate in the country changed, they immediately dropped the empirical work that they had been doing—Douglas is a good example—and fled to Washington during the early New Deal.

Bork: Douglas and Abe Fortas are probably the prime examples of that tendency.

Kitch: My impression from what I’ve been able to find on Chicago is that the interest that law schools had in economics did not come out of any explicit anti-interventionist thinking. It essentially came out of the idea that the legal system is going to be doing this now and that means we need to learn how to do it right and maybe the economists know something about how to do it right. If you look at the writings of, again to take Katz, or I think even Simons, you find a lot of ambivalence about whether to intervene or not. There is a great legitimacy given to the idea that the
government is going to be doing these things and we in the law schools should try to help the government do it right.

FRIEDMAN: You have a paradox that comes out of what all of you have been saying. You're saying that the real antecedent to the conjunction of law and economics was the institutional economists and legal realists who wanted to intervene from a particular point of view, who were trying to reshape society, and then you come to the next stage in which the person whom you're going to turn to, Henry Simons, represented all of the opposite tendencies. The natural development of legal economics at the University of Chicago then centered on a person who was opposed to almost everything that the institutionalists and legal realists stood for.

BOWMAN: It seems to me that economics as a part of so-called institutionalism was a very ambiguous thing, and except for Chicago it didn't have anything to do with price theory. If you look at the way Yale, in that period, thought of an economist it was no different from how they thought of a sociologist. As far as I can remember, it was only at Chicago that you had what we call economics put into the law in that way. Henry Simons was the economist at Chicago, but Walton Hamilton was the economist at Yale, and that speaks for itself.

DEMSETZ: Did the law school at Chicago know what it was getting when it got Henry Simons?

BLUM: In retrospect my hunch is that the older members of the faculty were either opposed to having an economist or indifferent. They looked upon this as another one of these things that Hutchins was thrusting upon the school. I don't know this for a fact.

DIRECTOR: I don't know a great deal about what happened. It had nothing to do with these big issues—institutionalism and intervention [laughter]. Henry Simons was not liked in the economics department. He had a few good friends in the law school like Wilbur and Sharp. Hutchins thought law schools as then in existence were mere trade schools anyway, and there wasn't much of a role for them any more than there was for an engineering school. Those two things combined to lead to the appointment of Simons to teach a course in the law school. He had a half-time appointment in the law school and he taught one course. He made one other attempt to teach a course with a lawyer, Crosskey, I believe, on income taxes. That was a great failure because neither of them wanted to listen to the other person [laughter].

WALLIS: Aaron, did Henry's association with Hutchins on some international trade study have anything to do with it?


DIRECTOR: That's right, that was part of their friendship.
WALLIS: Did that have anything to do with Simons’s contacts at the law school?

DIRECTOR: I don’t think so, but it’s quite possible.

STIGLER: I have gone over the correspondence of Frank Knight, and by 1933 or 1934 Frank Knight and Paul Douglas were communicating only by letter, no longer by speaking to one another. One of the hardest fights that was going on was over the question of whether this guy who had been brought around 1927 to Chicago from Iowa where he had studied with Frank Knight and had been sent to Europe for six months so that he would learn German so he could get a Ph.D and had written two book reviews in the previous twelve years could get tenure [laughter].

Into the faculty meetings would come Paul Douglas saying that “furthermore he’s a terrible teacher. The students all report that he doesn’t want to be bored with stupid questions and don’t ask him silly things ‘like that.’ He was late to class and everything else. Why should we have him?”

A year later, when A Positive Program for Laissez Faire\textsuperscript{18} had come out, Douglas said, “I like that report. It’s skillful propaganda. But it isn’t basic scholarship and we shouldn’t be giving our few jobs on that basis.”

Knight was taking a wholly admirable view and saying, “Any discussion of his imperfections is a personal attack on me” [laughter]. A level of discourse, thank God, I’ve never faced in a faculty meeting [laughter]. Aaron was in this squabble too, of course.

There was a compromise. “Well, we won’t do anything right away.” So there was a deep divisiveness in the economics department over Simons. Nobody had any doubts about how smart Henry Simons was, but there were great doubts about, for example, whether that book on personal income taxation\textsuperscript{19} would ever be finished. So the accommodation in the law school seemed to meet, I suspect, a set of short-term problems in the University.

MANNE: But there had to be some receptivity in the law school.

STIGLER: Oh, I agree, and I’m sure he was well liked and admired. Indeed, I think he did a much better job of teaching in the law school. I can remember—he was already a friend of mine in those days—that he was reporting that he was enjoying that much more than the teaching in economics. This was the first time any of these law students had ever met an intelligent conservative and things like that [laughter].


\textsuperscript{19} Henry C. Simons, Personal Income Taxation: The Definition of Income as a Problem of Fiscal Policy (1938).
COASE: I would like to raise a question about Henry Simons based on the Positive Program for Laissez Faire. This strikes me as a highly interventionist pamphlet. If you think of what he wanted to do in antitrust, he wanted to use it in such a way as to restructure American industry. If you think of his attitude toward regulation, he didn’t like what regulation produced, and he proposed to reform things by nationalization. I find some of the things that people say about Henry Simons difficult to understand. I never knew Henry Simons. I knew the pamphlet. I would be interested if someone could explain this pro-market view of Henry Simons.

DEMSZET: He could be interpreted as being pro market in the sense of the kind of competitive marketplace that you infer from price theory. At the same time he was against broad intervention of the more blatant socialist type. I think in the preface to the book he says that if we want to prevent the latter, then we had better change the present society that is interventionist bent to conform more to what a real market society should look like. You can paint him with different colors, depending on how you read him.

STIGLER: There is background that you have to understand. He was, for example, a violent critic of the NRA. Five years later he wrote the essay—I’m sure he had the same views earlier—on his great admiration for labor unions, "Some Reflections on Syndicalism." It’s a quite mixed picture. It’s true that he was the man that said that the Federal Trade Commission should be the most important agency in government, a phrase that surely should be on no one’s tombstone [laughter]. Everything Ronald says is right. Yet, relative to the hectic, excited days of the thirties he was leaning the other way.

FRIEDMAN: You have to recognize what the environment was at the time. By comparison with almost everybody else he was very free market oriented. I’ve gone back and reread the Positive Program and been astounded at what I read. To think that I thought at the time that it was strongly pro free market in its orientation!

Remember, probably in 1934 when it appeared, I would say that close to a majority of the social scientists and the students in the social sciences at the University of Chicago were either members of the Communist party or very close to it. That was the environment in which Frank Knight gave a series of lectures under the title, "Why I Am a Communist, by an Ex-Liberal." It was an environment in which the general intellectual atmo-

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20 Simons, supra note 18.
sphere was strongly prosocialist. It was strongly in favor of government going all the way to take over the whole economy.

Relative to that kind of atmosphere, the pamphlet created a great stir because it was widely interpreted as being, if you want, reactionary, strongly in favor of a lesser role for government rather than a greater role for government.

**DIRECTOR:** Henry Simons thought that doomsday was upon us.

**STIGLER:** Oh yes.

**DIRECTOR:** One of his interests in these interventionist programs was to make the private system of production palatable to his colleagues.

**BLUM:** If you go back to the leading law schools in the late thirties, you will find that a whole new group of courses had come in. A course on labor law, a course on securities regulation. Most of the people who taught those courses accepted the basic premises of the programs. So in the course, for example, on labor law, it would be taught that minimum wages had to be a good thing. I would guess that 90 percent of the students in my class would have gone along with that. Henry Simons ran counter to that trend because he raised very basic questions: What happens if you take land out of production? What happens if you have price supports for milk and crops? I think that was an enormously valuable contribution and had a great deal to do with the tone at the University of Chicago law school at that time and later.

**WALLIS:** Simons had considerable influence directly on individuals. I was a graduate student around there, as were Milton and George. Where I saw him I can’t even say. I never took a course from him. He knew a lot of people and had a lot of personal influence. I think that’s probably at least as important as what happened in the courses.

**DIRECTOR:** I never took a course from him, but I was greatly influenced by him.

**FRIEDMAN:** I never took a course from him.

**ROSE FRIEDMAN:** I did. As an undergraduate.

**BLUM:** I got to know him as a result of drinking beer with him in Hanley’s tavern about once a week over a period of about six or eight months.

**FRIEDMAN:** That is a very important element. Henry was a very gregarious fellow. He had a great deal of influence through these social interactions.

**MANNE:** What was the situation at the time of Henry Simons’s death in the summer of 1946? Where was everybody, Director, Stigler?

**FRIEDMAN:** Aaron Director was in Washington, D.C.; George Stigler and I were at the University of Minnesota. At the time I had accepted an appointment at Chicago and was due to come to Chicago that fall. George
had accepted an appointment at Brown University and was due to go to Brown that fall.

Wallis: And I was at Stanford and due to go to Chicago that fall.

Stigler: And Aaron had already been hired to come to Chicago that fall, before Henry’s death.

Coase: Henry Simons also wanted George Stigler to go to the University of Chicago, but that didn’t happen.

Friedman: It was decided that George Stigler was too empirical and I was theoretical [laughter].

Director: Either that, Milton, or they thought that they could stand one of you but not two.

Rose Friedman: No, no, we wouldn’t have gone if George had gone. Milton wouldn’t have been asked if George had gone.

Friedman: If they hadn’t rejected George as being too empirical, I would never have been asked.

Stigler: It may have been my greatest service to Chicago [laughter].

Wallis: When you say they, don’t blame that on the economics department. That was Hutchins and Colwell, the president.

Friedman: Colwell interviewed George and decided George was too empirical. He was really responsible.

Demsetz: Is that because George asked him, “How much will you pay me?” [laughter].

Moore: Aaron, could you comment on the events that were involved in your appointment?

Director: Oh, the accident. What happened was that Hayek, through, I think, Hardy, met a person called Luhnow, who was then responsible for a lot of money in the Volker Fund. He persuaded Luhnow to give a

22 Harold W. Luhnow was the President of William Volker & Co. and chairman of the William Volker Fund from 1947 until his death in the mid-1970s. William Volker & Co. was located in Kansas City, Missouri, where it conducted a wholesale furniture distribution business covering a territory from Kansas City to the West Coast. William Volker had founded the William Volker Fund. It operated as a local charitable fund in Kansas City, primarily supporting local health services.

Harold W. Luhnow was the son of William Volker’s sister Emma. William Volker had no children. Luhnow was born and grew up in Chicago. He graduated from Kansas State University in 1919 and immediately went to work for the company. Luhnow’s interest in political ideas evolved out of his activities in the 1930s in support of civic betterment in the Kansas City area. He was involved with a group that succeeded in overthrowing the Pendegast Machine in Kansas City. This activity brought him into contact with Loren B. Miller of the Civic Research Institute and led to a broader interest in ideas about government. He was influenced by the writings of Von Mises and Hayek, particularly The Road to Serfdom (note infra).

After Luhnow became chairman of the Fund in 1947, he added support of higher education to its program. The Fund supported Von Mises at the New York University Business School, Hayek at the Committee on Social Thought, and Director at the Law School of the University of Chicago. It supported research and writing projects and summer conferences.
certain sum of money to establish a center that would promote private enterprise. It was earlier decided that Chicago was the only place that was likely to accept such a project, and it was also decided that the law school was the only part of the University of Chicago that would accept such a project.

Henry Simons was the one that suggested to Hayek that I should be the person in charge of the project. Apparently the dean of the law school, Wilbur Katz, then wrote in one condition. It was that I should be permitted to teach one course in the law school. The course, of course, was economic analysis. Henry Simons had tired of teaching it by then and had been trying to get the law school to get me to teach it.

There I was with this project, which never amounted to very much, teaching this course on Economic Analysis and Public Policy. The first thing I tried to do was to change the title of the course to omit the public policy part. I was told that that was the only justification for teaching a course in economics in the law school, that it had this public policy aspect. Well, of course, the title remained but there was no public policy. This was a course in price theory, now barbarously called microeconomics, and the attendance varied from time to time. At the beginning of course the number was much larger than at the end [laughter]. It had some very good students in it. One (Bork) is sitting on my right. A little later Edward Levi invited me to give a lecture on Marx in a course that he gave on jurisprudence. I didn’t know anything about Marx, but apparently he thought it was a very good lecture [laughter]. And sometime a little later he suggested that I should teach the antitrust course with him. That continued throughout my period.

BORK: Aaron says he didn’t have public policy in the course. My recollection of the course was that the application of price theory to issues of public policy was one of the more interesting parts. You say it wasn’t there?

DIRECTOR: That may well be, but I’m not responsible for the inferences you drew from the analysis [laughter].

BORK: Those were not inferences. Those were illustrations.

BECKER: Aaron, did you consider things like minimum wage?

DIRECTOR: Oh yes.

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Its assets at the time of William Volker’s death in 1947 were approximately $15 million. It operated with a single professional staff person, Herbert Cornuelle (1949-53), and Ken Templeton. In the 1960s the company and the Fund moved to Burlingame, California. The Fund was dissolved after Luhnow’s death and its assets distributed to local Kansas City charities and to the Hoover Institution of Stanford University.

This information was obtained in conversations with Herbert Cornuelle, Morris Cox, and Ken Templeton.
BORK: Labor union behavior and all kinds of things came in.

KITCH: In defense of Aaron's versions of what he was teaching, I would like to offer a story recently told to me by Abner Mikva. Mikva says that Aaron was teaching about the effects of rent control and that he went through a class in which he analyzed all of the effects that rent control had on the supply of housing and on the allocation of the stock to those who needed it less as opposed to those who needed it more, and so on. This class generated excitement among the students, and after it was over Abner and others went running forward and said, "But do you mean that you would repeal rent control and leave the widows and others without adequate resources to fend for themselves?" Director responded, "I just explained to you why rent control should not have been imposed in the first place. I didn't say anything about repealing rent control" [laughter].

MOORE: Ward Bowman, would you comment on what you and the other economists were doing at the law school during this period and how you related to Aaron?

BOWMAN: I came to the University of Chicago not as a teacher but as a research associate. I was hired by Levi because I had worked in the antitrust and war divisions of the Department of Justice and had done what have already been referred to as industry studies. I think I was more than an intellectual string saver but, on the other hand, there was a tradition in the antitrust division of what might be called a scandal theory of business, that conspiracies were everywhere.

The only teaching I ever did in my ten years at Chicago was an occasional seminar, one on resale price maintenance. I never had the advantages Bob Bork did of taking Aaron's courses. But I did have an office next to his, and when he and Levi would discuss problems before class I now will admit that I eavesdropped [laughter]. Aaron would criticize our work and kept us from going off down the garden path. He oriented my work toward things that were more interesting and less descriptive. I got my legal education at the University of Chicago without taking any formal classes.

The more interesting part is my leaving Chicago and going to Yale in 1956. That was purely an accident, a misinterpretation by Gene Rostow, I had written an article on the steel industry at a time when I was greatly influenced by Henry Simons's views on deconcentration. So Gene Rostow hired me to both teach and be a research associate at Yale.

My experience at Chicago was one of the more pleasant in my life and one of the most stimulating. The most important thing was the kind of people I worked with, people like John McGee and Bob Bork. The jury

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project was going on in another area at the same time. We were on limited salaries and limited budget, but as we look back on it now, we are not unproud of our contribution.

LANDES: Aaron, could you be more explicit about your role in the antitrust course with Ed Levi?

DIRECTOR: We began with a system in which we were both to teach the course at the same time. That didn't even work for a whole quarter. So very early it was divided into four days for Edward and one day for me.

FRIEDMAN: Equal time!

STIGLER: No, equal output.

DIRECTOR: He, on occasion, would decide, "Well, these questions will be taken up on days when religion is discussed."

BORK: There is a quality about the teaching at that time that doesn't come through. A lot of us who took the antitrust course or the economics course underwent what can only be called a religious conversion. It changed our view of the entire world. Aaron is talking a little bit as if it was dry stuff without particular application. It wasn't. We became janisaries as a result of this experience.

LIEBELER: I took all of Director's classes. What was important about my experience with Professor Director at that time can best be illustrated by the antitrust course. For four days each week Ed Levi would develop the law and would use the traditional techniques of legal reasoning to relate the cases to each other and create a synthesis of the kind all the lawyers here are familiar with to explain and rationalize the cases. It was some accomplishment. I didn't realize what an accomplishment at that time. But the students didn't see, or didn't see right away, what the problems were until they started listening to Professor Director.

For four days Ed would do this, and for one day each week Aaron Director would tell us that everything that Levi had told us the preceding four days was nonsense. He used economic analysis to show us that the legal analysis simply would not stand up. This was revealing to the students that were prepared to listen. Bob is exactly right. It wasn't in my case a religious conversion. It was religious reinforcement. I came from North Dakota and have been a son of a bitch for a long time [laughter].

What had we learned when this process had been completed? We learned that there was a system of analysis that (1) was quite relevant to the stuff we talked about in law school and (2) was much more powerful than anything that the law professors, than anything that Ed Levi had to tell us.

Aaron Director has always been to me like the character in the Li'l Abner comic strip, the "bald iggle," that has to be kept locked up in the refrigerator door because whenever you opened the refrigerator door and
looked at him you were compelled to tell the truth [laughter]. And a little bit of that, of course, goes a long way.

I think it is a combination both of Aaron’s personal characteristics and of the kind of analysis that he used in that context juxtaposed with the kind of stuff that Ed Levi was trying to do with those cases that gave his presentation its power. We were compelled as students to get closer to the root of the matter than we otherwise would have.

Aaron Director made significant contributions to the subsequent development of the antitrust field, but to me his most important contribution by far is much less tangible but more important. He developed and reinforced in his students a state of mind without which much of what they have done would not have been done or would have been done less well.

BORK: One of the pleasures of that course was to watch Ed agonizing as these cases he had always believed in and worked on were systematically turned into incoherent statements. Ed fought brilliantly for years before he finally gave way.

MANNE: I was a student in the early fifties, around the same time as Bob Bork. One of the things that is always emphasized in discussions of this period is antitrust. That was not the way that it affected me. It was clear to me very early that economics was important in most of the courses I was taking in law school—the course in bankruptcy with Walter Blum or tax, the course in torts with Harry Kalven, contracts with Sharp. In each of these I tended to think of them very much in the way Bob Bork and Jim Liebeler were describing the antitrust course. Aaron Director was very much in the classroom in those other subjects as well. I don’t think the majority of students in my class sensed economics pervading the law school as much as I did. To me it was almost overwhelming and remained with me ever after. Perhaps that was because I had majored in economics as an undergraduate.

Because of my impressions as a student, I have always felt that the pervasive influence of economics in the law school began to deteriorate in later years. I recall that in my last semester in law school I took a seminar in jurisprudence with Karl Llewellyn. Most of the classes of that seminar ended up with Karl going into an absolute frenzy, turning as red as a beet, and storming out of the classroom because a few students there had made the effort we’d all been trained to make. That was to argue for what we thought was a correct analysis, and that generally meant economics. It infuriated Karl. At one point that I have indelibly etched in my mind he stormed out of the room and said, “Wait until my first-year students get to this seminar, then you’ll see jurisprudence students” [laughter].

BLUM: Just a bit of legal realism!

FRIEDMAN: Did it happen?
MANNE: I am afraid it did. That’s my perception of what happened. But I can tell you that that seminar that had eight or ten students in it was a group of students who already had some understanding of how to use economic analysis in just daily debate with someone who had never seen it before.

STIGLER: Why don’t we finish up embarrassing Aaron now so that he has a rest after this? I think that Aaron’s effectiveness was not primarily in the classroom for a lot of people. If Lester Telser were here, he would say that he never had a class with Aaron in his life but Aaron had a major intellectual influence on him. Phil Neal once said that Aaron was the only teacher he had ever learned from in his life. And Phil wasn’t a bad student.

I had a class from Aaron in the early thirties in statistics.

DIRECTOR: I don’t believe it.

STIGLER: I really didn’t get to know him until the time of the first Mont Pelerin meeting, which was thirty-four years ago, and I’ve considered myself to be a pupil of his ever since. With some embarrassment, I think of the number of times in which I’ve confidently advanced a view that I’ve known was true all the time and after half an hour of gentle and friendly Socratic discussion I have discovered I was standing on air. That’s not an experience I’ve been alone in having. In that form of personal discourse, his influence has been magnitudes larger than almost anyone else I’ve ever met.

BECKER: I might comment as a student in the economics department during this period. I and Lester and others got to know Aaron, and some of us attended the antitrust course he taught with Edward Levi. The economists there began to feel inferior. The law school students could talk so well, in complete sentences [laughter]. We never got a chance to say anything or felt that we were capable of saying anything. But I felt at the time that what I got out of there was the feeling that business practices shouldn’t be explained away as irrational. They have a purpose. What they are is often difficult to assess, but there is a way to understand them if one is perceptive enough. It is an influence that has stayed with me and I know with a number of other students.

McGEE: I don’t want to indict Aaron with the only known failure of his most successful of all adult education programs by saying that he converted me, but he did. To say that this man was a teacher or an influence is to grossly understate the impact he had on me. I arrived unhappily freighted with what I thought economics was, unlike some who were better off than that—they were merely impoverished. I was rich, but in a lot of wrong stuff. And Aaron, with an economy of words and exposure more quickly than anything I’ve ever seen before or since changed my
view of the world, completely changed it. He put me through the fires in a private way. Almost everything I knew was right was wrong, and with a patience and this economy, this relentless pursuit of the answer to the conundrum, he transformed my life as a professional. This adult education experience in the law school and the university at large, I think, was simply enormous.

BLUM: Aaron, am I right that we had a kind of roving seminar with Wilbur Katz, Harry Kalven, myself, Malcolm Sharp, and you? We met about once a month and read something. That extended over quite a period of time. I remember Milton attended a number of the sessions. It was the first time I ever heard of his education voucher plan. I know it had a great deal of influence on me.

I think it had a great deal of influence on Harry Kalven. As Harry began to develop his materials in torts, more and more he began looking for economic dimensions in the subject. Admittedly, those were minor steps at the time, compared to where we are today, but I think they were important steps.

FRIEDMAN: Wally, did that have a relation to the Blum and Kalven Uneasy Case?24 Did that grow out of that seminar?

BLUM: In part, it did grow out of that seminar.

DEMSETZ: Wasn’t there any resistance to the expanding role of economics in the law school by other members of the faculty?

BLUM: I don’t think so.

BORK: I think there was, Wally.

BLUM: My perception is that there were a couple of old-timers on the faculty who would object to any change, that was almost pro forma. If you proposed to bring a new economist on the faculty, eyebrows were raised. If you proposed a new course with an economic component, you would hear some grumbling. I don’t think it was really serious resistance. I think Karl Llewellyn was the first person on the faculty I can think of.

BORK: Roscoe Steffen.

BLUM: Well, maybe you are right. Maybe Roscoe Steffen was in that category, too; I had forgotten.

DIRECTOR: I don’t think there was any great resistance, but I don’t think there was any great enthusiasm. The resistance appeared only when it came time to consider whether we should have a second economist.

BORK: I think there was some resistance because the students like Henry were going into other courses and raising problems that people had not dealt with before and making them very uncomfortable.

MANNHE: Bob, you may recall the marvelous episode in the year the Llewellyns and Al Dunham arrived. It was much noticed by the students

at the time. I don’t know whether the faculty noticed. There was the tea every afternoon down in the student lounge, and we noticed that early on in that year—this was fifty-one or fifty-two—that someone of Walter Blum, Harry Kalven, Meltzer, sometimes Levi, often Aaron, would talk with Allison Dunham in that room. Early in the fall, as he began to hear what was being said about economics and economics and law at Chicago, he just was completely incredulous. He just could not believe it. He had a kind of sneering response to this that it couldn’t really be. The process continued. Every afternoon one could watch it as Dunham began to weaken, or smarten, I should say. By midyear he was listening attentively. He was no longer being hostile and opposing, and by the end of the year it was just one happy party as they were all investigating issues of interest all together.

It was a quite remarkable thing to watch. In that one year someone who came from—literally—total ignorance even of the existence of the possibility of that kind of analysis to a rather confirmed and I would almost say sophisticated student of that time of law and economics.

Friedman: Hayek indirectly played a crucial role in Aaron coming to Chicago. Aaron in turn played a crucial role in Hayek’s coming to Chicago, and I think that ought to be noted in the record. Hayek came to Chicago in 1950 in connection with money provided by the Volker Fund, the same foundation that was responsible for the original grant that brought Aaron to Chicago. Hayek came to the Committee on Social Thought. Aaron knows the story better than I do.

Director: I don’t know too much about it. The initial attempt to get Hayek to this country was I believe at Princeton, at the Center for Advanced Studies.

Friedman: It was Luhnow, I think.

Director: Yes, it was the same money offered there.

Friedman: But through whom was Luhnow operating, because he wasn’t directly going to Princeton? Who in this country, was it Henry Hazlitt or who?

Director: I don’t know. It was turned down. Then it was suggested that Chicago might do it. I don’t know whether they actually inquired of the economics department and got a negative answer or whether they thought it wasn’t necessary to inquire.

Friedman: No, I think they inquired of the economics department and got a negative answer.

Director: Then it occurred to me that Nef would be a person who

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25 John Nef was a social scientist and founder of the Committee on Social Thought at the University of Chicago.
would be interested in Hayek coming to the University of Chicago. I suggested that to Nef and he carried it through.

Friedman: So your only connection was to make the suggestion. But who approached you?

Director: I'm not sure—it could have been Fritz Machlup who was interested in having Hayek here—it wasn't Luhnow.

Friedman: Fritz Machlup was not at Princeton, he was at Buffalo.

Director: No, but he had negotiated for Hayek on the publication of The Road to Serfdom. I am not sure who it was.

Friedman: Hayek was then appointed in the Committee on Social Thought, and he was at Chicago for roughly ten years before he went back to Germany.

Coase: My understanding is that Aaron was responsible for getting the University of Chicago Press to publish The Road to Serfdom.

Director: That's also true, because it was turned down by one of the commercial publishers on the ground that it wasn't going to sell.

Moore: In every case I've ever been associated with, there is resistance. According to what we've heard, there wasn't any important resistance to the developments in the law school. Why not?

Director: I can give you one reason. The cost to the law school was very slight. Most of the funds were obtained by the individuals and not by the dean. The returns to the law school—this has nothing to do with substance—in terms of public relations were very high. Why should they resist?

Manne: I can tell you from my experience that that is not a sufficient explanation.

Bowman: It seems to me that whether you have resistance or not depends on whether you have a strong dean who is sympathetic, without regard to what a lot of the faculty members think. My recollection of Ed Levi's deanship during this period was that you just damn well better not object.

Friedman: I think there's a very different explanation. There was an enormous amount of resistance. But there were a lot of independent sources of power around the University of Chicago. For example, go back to Hayek. The economics department was not willing to have Hayek. Now go back to a still earlier case that shows the same phenomenon in a different light. It was Rexford Guy Tugwell. Hutchins wanted to bring him to the University of Chicago. The economics department refused to have anything to do with it and refused to appoint him to their faculty. So

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26 Friedrich A. von Hayek, The Road to Serfdom (1944).
Hutchins set up a Department of Planning and made him a professor in the Department of Planning. There was a move to bring Hayek. The economics department was unwilling to do it. He came into the Committee on Social Thought. Henry Simons met enormous opposition in the economics department, but it was possible to find an accommodation at the law school.

I don't think the explanation is at all that there wasn't resistance. But only because Chicago at that time—I don't know whether it is still true, I hope so—was fluid enough to have a lot of different places where you could move, where you had the business school, you had the economics department, the law school, or you could set up something like the Committee on Social Thought or the Department of Planning. It was possible to find a place of least resistance where you could find a little crack in the wall, some roots would take root, and break up the wall.

Wallis: I agree with that, because that kind of thing was happening in other schools than the law school in the University. There were always things being started. There were innovations all the time, and nobody ever resisted them. Nobody was going to stop what he was doing to resist. The attitude would be, "Well, let those fools do that stuff. If that's what they want to do, it doesn't affect me." That was the general attitude there. It goes back to what Milton said, an extremely decentralized kind of administration.

Director: Yes, but the question here I thought was, Was there any resistance in the law school itself?

Demsetz: I wonder if either Aaron or his law professor colleagues fully appreciated what was happening. My guess is they didn't. My guess is that this was viewed as a very narrow hole in the dam geared mainly to antitrust where it was perfectly appropriate. At that time there was probably less resistance than might have emerged later when the whole operation burst forth in ways that weren't forecast by the people involved.

Manne: There had been very extensive preparations, and as a result no one could mount any kind of campaign in opposition. It was a very unusual circumstance, one that you would rarely find in a law school before or after. I don't think it was true that the faculty didn't know that economics was an intellectual force pervading the entire community of the law school. Everyone was quite aware of it and they articulated their feelings about it. All of that may have changed with the introduction of outside opposition in 1951.

Bork: A large part of it had to do with the presence on the faculty of a small, closely knit group of people who were highly intellectual and valued this kind of discussion: Walter Blum, Ed Levi, Bernie Meltzer, and so forth. If that group hadn't been there, and hadn't been as receptive
and as powerful intellectually as it was, so that it dominated the law school, this experiment might not have worked at all.

**Kitch:** I think it is important—at least as far as I can reconstruct from the written record—that this never was presented as a program with large programmatic reach and effect. This was an activity involving the appointment of maybe one economist. It might be interesting. It did not have clear implications for someone who was, say, teaching property. It didn’t affect the way he might approach his subject and what he would do. You don’t find in the written record self-conscious articulation of the notion that law and economics is a very special, demanding field that affects what other people are doing. It was just one of many things—it existed side by side with jury project, for instance, which was in some ways a larger activity in terms of the number of people it employed and the level of activity, although its effects have been much less. It seems to me that the reaction of one who was not taken with law and economics was simply not to pay any attention to it, not to fight it.

**Manne:** I maintain that there was a brief period when economics really did dominate the scene almost to the exclusion of other things in the law school, and that was a period in the late forties to the early or mid-fifties. After that point economics had a somewhat more modest role within the law school.

**Kitch:** My experience as a student in the later period is consistent with that theme. My memory as a student in the period 1961–64 was that economics played quite a minor role in the training I received. I began with the Elements course from Llewellyn, which was staged as a very important introduction to the essential nature of what we would be doing in law school. I don’t remember Malcolm Sharp as being interested in economics. You encountered it in antitrust, but even there it was only one day out of five, and there was great resistance to the introduction of economics in antitrust by most of the students in my class. If I look at the people who graduated from law school with me in 1964, it’s hard to see any particular mark of the economics content in their later professional work.

For myself, my training in economics began, not when I was a student, but when I returned to the law school in 1965.

**Blum:** I think that there’s another way of looking at it. There’s a long tradition at the law school of allowing particular faculty members to introduce into their own courses visitors, materials from other disciplines. I can think of the teacher of criminal law bringing in psychiatrists. I remember in my teaching of taxation I once had Roy Blough from the Department of Economics come over and teach for a week or so. Richard Goode and I gave two seminars together on some aspects of economics and
taxation. I think the faculty as a whole saw the development of economics in the antitrust course as part of that atmosphere of the law school. And that’s what permitted it a foothold. That, along with the fact that there had been the earlier venture with Henry Simons that had been regarded as very successful by a few members of the faculty.

MANNE: During the period I was a student at the law school, economics seemed a very dominant force. But by and large the students hated it. They were generally ideologically opposed or thought they were. A great many objected to what they considered a failing in their legal education.

I think Edward Levi was concerned that the law school might have gone too far from the necessary amount of vocational training. I recall after the grades came back on the Illinois bar exams in the spring of 1952 that Ed called me in and was very disturbed that a large number of my classmates had not passed the bar examination and wanted to know what I thought should be done about it. I thought at the time, “Why is he concerned about such a thing?” I don’t know if I actually said it. It was exactly what I would have anticipated of all of us. My only surprise was that I had passed the bar exam. I think that things were ripe for the attitude that Llewellyn brought in that year, that Chicago was not doing an adequate job of training lawyers. He expressed it in precisely those terms.

As I look back, and as I look at classmates, I rather suspect that the best job of training lawyers in the history of legal education was being done. But there was not yet an understanding of why. It had emerged intellectually, but it had surprised everyone and no one had really viewed it in terms of a policy that one might consciously introduce as a way of improving legal education. I have since spent a lot of time trying to improve legal education in exactly that way, but I have no claim to originality at all. It’s interesting how much opposition there was to the idea at that time.

MOORE: Can we turn now to the period around 1957?

DEMSZ: I came to Chicago in 1963–64. I think the period before my arrival was a period that in many respects was a remarkable one for the subject matter of this conference. The interaction of law and economics did burst beyond the narrower confines of the antitrust area. There was the Journal of Law & Economics that had come upon the scene and made the incursion of economics into the affairs of the law a much more formidable matter. At the University of Chicago during this period we were fortunate enough to have both Aaron Director and Ronald Coase, which significantly increased the impact of economics in the law school. It was the understanding at the time that Ronald Coase was brought as a replacement for Aaron, but until Aaron actually retired both were there.
They were surrounded by a rather remarkable group of colleagues who interacted in a fashion that I have not known before or since. There were George Stigler, Lester Telser, Peter Pashigian, and Reuben Kessel. The group was way beyond the critical mass. People were very supportive while at the same time they were critical. It was a very happy intellectual affair. Posner had not yet come on the scene, although it is clear he could have replaced any four men on the team, and Gary Becker had not yet come. I think something was bound to happen, and it did.

KLEIN: As a student at Chicago between 1964 and 1968 I attended the Industrial Organization Workshop, and I noticed that the few times that Aaron would stop puffing his pipe and speak that, first of all, there was a hush, and then he would focus his remark right at the core of the issue. I remember going to the library to look for his articles because for some reason his articles were not on any of the reading lists [laughter] and found a great deficiency in the library’s card catalog [laughter].

Ronald Coase taught a course that was jointly listed in the law school, the economics department, and the business school, on antitrust. I took that class, and I was one of the few economics students who did. What he did was copy large sections of the case record in major antitrust cases, and we would go through the record and try to figure what was going on. Most of the time we reached the conclusion that we had no idea what was really going on in the business practices described. I got the feeling that something was deficient in economic theory. You had the feeling that there was a lot of work to be done in terms of making economic theory much richer.

COASE: I should explain that when I came to the University of Chicago, I regarded my role as that of Saint Paul to Aaron Director’s Christ [laughter]. He got the doctrine going, and what I had to do was bring it to the gentiles. And I don’t think I would have ever come to the University of Chicago had it not been for the existence of the Journal of Law & Economics. That’s what I wanted to do. I wanted to get what Aaron had started going so that the whole profession—and when I say the profession, I mean the economics profession; I have no interest in lawyers or legal education [laughter]. Never have had. Once quite early on I explained that I felt a little unhappy at the law school because I didn’t have any interest in legal education. I explained this to Phil Neal, and he said, “Oh well, you let me worry about that” [laughter]. “Don’t you worry about that.”

My interest is in economics, and I was interested in carrying forward the Journal of Law & Economics because I thought it would change what economists did, along the lines that Ben Klein was describing.

I remember giving that course. It so happened that I had never read an
antitrust case before I came to the University of Chicago. I knew nothing about it. My recollection of that course is that it was what I call "hearty laughter" [laughter]. We'd read what these people were saying, and we couldn't make any sense of it at all [laughter]. It was just absurd what was going on.

Maybe I made some attempt to make sense of it, but I knew very little about the subject, and probably what I said about the cases wasn't worth anything either. That was our feeling. No one really understood these things, and it was that kind of lesson that I wanted to get over to economists, and which I think the *Journal of Law & Economics* did in the end get over by the example of people examining cases, examining business practices, and showing that there was some sense to them, but it wasn't the sense that people had given to them before.

I do think some knowledge of legal institutions is essential for economists working in certain areas, but it's what it does to economists that interests me, not what it does to lawyers. So being in a law school is a very uneasy position for me, and I suspect would be for almost any economist. On the one hand, you can't do the sort of work you would like to do in an economics department. They aren't interested. You can do it in a law school, but at the same time one really isn't contributing a great deal to legal education.

I think you can often learn more about how the economic system works by reading law books and cases in law books than you can by reading economics books because you do get descriptions of actual business practices which are difficult to explain. Many of the examples which are given in economics books are made up by the economists and don't represent actual practices at all.

Landes: When I took over Aaron's role of teaching antitrust with a lawyer, Ronald said he had gotten tired of antitrust because when the prices went up the judges said it was monopoly, when the prices went down, they said it was predatory pricing, and when they stayed the same, they said it was tacit collusion [laughter].

Morgan: I was a law student in Chicago in 1962-65 and overlapped with Ed Kitch almost completely. As a matter of fact, we were in the same antitrust class. I would confirm most of the things that have been said. There was no sense on the part of the students of any controversy, if indeed there was any, over the role law and economics ought to be playing in the law school at that time.

We tend to think of law and economics today as having an affirmative role, an integrating quality that helps students put ideas together. My recollection of the antitrust course is that the role of economics was primarily iconoclastic—primarily to demonstrate that what appeared to
be true wasn’t true, that on Friday the ideas we looked at during the first four days were devastated.

Most law professors I know don’t like what the courts are doing. Everybody has a basis for criticizing the cases. But most law professors come at it from a basically verbal analysis. The judges didn’t use the terms that they used in Case A the same way in Case B, and therefore they didn’t follow the rule or they developed authority in the wrong way. But the economic analysis gave us a whole new perspective to approach the cases. Aaron Director was much more effective than the typical law professor at providing an insight into what it was that the judges had not understood.

PRIEST: I was a law student in Ronald’s price theory class and all of Ronald’s other classes. I thought they were tremendously exciting. There was a good group (although small in relation to the law school as a whole) that was quite excited by Ronald’s classes. The antitrust classes presented puzzles of extraordinary interest to law students and were talked about in the halls a great deal.

SIEGAN: I was a student of both Aaron’s and Ronald’s. I came into Aaron’s class the second year of law school as a New Dealer. The ideas presented in the class were very challenging and were ones that I had dismissed. I came to law school after World War II in 1948, and my ideas in the economic area, I thought, were well established. Aaron’s perspective was very influential in forming my views later on. I can’t say it happened immediately, but it set in motion a process which in time prevailed.

My experience with Ronald was as delightful as any could possibly be. I took in part the role of a teacher, sometimes Ronald had questions about my perspectives on zoning. I don’t know if they were sincere questions or if they were designed to bring forth the process in which I was engaged. The work I did as a one-year research fellow at the law school resulted in articles and a book. Working with Ronald was one of the great experiences of my life. It put into practice the things that I had had an opportunity to gain from Aaron and which had resolved themselves in my mind over the years. I think the perspective I presented in the zoning area was just another aspect of the basic kind of view that I had been considering in that class, which applied to the zoning area as obviously as it applies to other areas.

MOORE: Ward, can you talk about developments at Yale?

BOWMAN: I’m considered at Yale as the longest visiting professor from

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27 Bernard H. Siegan, Non-zoning in Houston, 13 J. Law & Econ. 71 (1970); Land Use without Zoning (1972).
the University of Chicago at that institution. I retired last year and as Bob aptly put it, "now he's forgotten but not gone" [laughter].

Bork: I wouldn't say a thing like that, and if I did, it would be plagiarism anyway.

Bowman: As Bob said, I was hired under a misapprehension because of Gene Rostow's belief that my position was represented by an early paper on the steel industry in which I suggested it should be broken up into little bits. But I'm not alone in that—a lot of you have made those mistakes, so I don't have to apologize too much for that.

The first course I got involved in was one with Gene Rostow appropriately entitled "Public Control of Business," and that course was a series of readings in the problems of full employment and the full employment act and what public policies should be, and they read a little bit of everybody. He then asked me to prepare a new list of materials. I never got that done.

Fortunately, Bob Bork came along and I got tenure. Then I decided I ought to teach what I was interested in and what I could do least worst at. Therefore I moved into my second series of mistakes, which was how to teach an economics course to lawyers. I thought that I ought to teach a course to people who had had no economics, to people who hadn't done more than the intermediate level, and to people who wanted to go farther, even though they may not have had a Ph.D. in economics, but had had a lot. That was impossible. I tried to teach Alchian and Allen to the first group, George Stigler to the second, and Milton Friedman's theory to the third. Eventually I taught straight price theory.

I had a few students who got introduced to the subject and related it to the law in fields that I knew something about, mostly problems in competition and monopoly and some regulated industries. I had almost no connection at all with the economics department and there was no business school. I think the only thing that saved me at Yale was that I conned the institution into hiring Bob Bork, and he made my life there not only bearable but very delightful.

Bork: You have described the first half of the accident. They hired you because of an article you had recanted, but they didn't know that. Then when I came I got tenure because of the same story as in Mary McCarthy's Groves of Academe. When the fellow is about to be fired for incompetence, he suddenly announces he's been a Communist all those years, although he hadn't been. They couldn't fire him. In my case, I came out for Goldwater in 1964 [laughter], which immunized me.

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28 Bowman, supra note 22.
29 Mary McCarthy, Groves of Academe (1952).
Ward’s quite right, there was no critical mass there. The economics department wasn’t interested in these things. There was no business school. So it was pretty much a conversation between two or three people. New developments at Yale will have to be due to people like George Priest, who is there now, and Al Klevorick.

MOORE: What about Calabresi?

BORK: Yes, but there just hasn’t been a lot of discussion. Rostow had a wholly different view of these things and that conversation never really got going. For some reason, a conversation with Calabresi never got going. He really wasn’t interested in industrial organization. The era of exports from Chicago to Yale, which began accidentally, seems to have ended—unless George [Priest] carries it on.

BOWMAN: Bob, you might tell them about unbalancing the faculty.

BORK: Oh, yes. We had three people who were interested—Ralph Winter picked up the Chicago business by osmosis. They were going to hire another person who knew something about the rudiments of economics in some field. It was pointed out that that would be the fourth person who knew something about economics on a faculty of forty-five, and that would unbalance the faculty [laughter].

FRIEDMAN: They were right [laughter].

BORK: They didn’t do it.

MANNE: I think we do have to address the significance of Guido Calabresi’s work and the development of the concept of law and economics, particularly the transition from law and economics as almost exclusively concerned with industrial organization and regulation of industries into other fields of law. I think that book\textsuperscript{30} played a significant role in that. It was an important contribution. Rostow’s presence at Yale and his articulation of an interest in economics made a difference. There were not many of those.

BORK: I shouldn’t talk about law and economics generally. I am a lawyer who happened to get into some basic economics in a legal field. I have no desire to follow economics into other fields. I am much more interested in going off into other fields of law. As far as I know, the economists have not yet done any damage to constitutional law.

POSNER: We are working on that.

MANNE: We’ll chase you out of that too [laughter].

BORK: Not before retirement time.

MOORE: Jesse, could you talk about Harvard?

MARKHAM: When I first looked over the list of attendees, I thought my principal distinction was a claim to product differentiation, as I am the

only person from Harvard. After listening to the discussion, I find that my
real distinction is that I am the only person here who is not from or out of
Chicago. If I speak in a very strange tongue, out of a completely different
culture, bringing it to you from the real world as I do, I hope that will be
forgiven [laughter].

This era at Harvard began with Ed Mason. Ed Mason, you may recall,
wrote an article published in 1937 entitled "Monopoly in Law and Eco-
nomics."31 In the article he lamented the fact that in the antitrust field
economics students could speak only in models and lawyers could speak
only in rules. He urged that the policy could never become a rational
policy unless the two professions primarily concerned with antitrust could
somehow merge their intellectual assets.

When I returned to Harvard after World War II, I think I can safely say
that there was absolutely no connection whatsoever between law and
economics and no effort to make any connection between them until Ed
Mason decided in 1946 to invite Milton Katz from the law school to
cooperate in a law and economics seminar. All of the people in it, as far as
I can recall, had announced some intention of writing a thesis under Ed
Mason in industrial organization. There may have been one or two of
Milton Katz's law students, but there was no particularly recognized
contingent from the law school. That gradually evolved into a course that
became a genuine joint product of the law school and the economics
department.

It became more than just a course aimed toward industrial organization
or antitrust. They would pick some topic of public policy significance
ranging from copyrights to patents, tie-in sales, mergers, etc., and that
would be the seminar for that particular year. It had one distinct disadvan-
tage—those who graduated from law school in 1956 would have had the
benefit of knowing something about patents but nothing else. If you gradu-
ated a year later, you became an expert in merger analysis. That is about
where the situation at Harvard has stayed.

One of the reasons that there has been no more of what I understand to
have gone on at Chicago is partly because long ago Harvard became
wedded to the case method of instruction, the Socratic method in very
large classes built around cases. You really can't introduce economics
concepts that way. You have everybody examining this particular Su-
preme Court decision, picking it to death.

What you do have in the law school is some recognition that all lawyers
ought to know a little bit about economics. You have individual econom-
ics professors who hold joint appointments in the law school, such as

31 E. S. Mason, Monopoly in Law and Economics, 47 Yale L. J. 34 (1937).
Dick Musgrave, who teaches a course on the economics of taxation. I have, on one or two occasions, given a course in price theory. Dick Caves has done this. We have also given a straight industrial organization course in the law school from time to time.

Moore: Dick, could you comment on Harvard?

Posner: When I was a student, 1959–62, there was no course in economics at the Harvard Law School. There was some economic content in Don Turner’s antitrust course, although I didn’t take that course. He and Derek Bok gave a course that I did take in economic regulation which talked about the Federal Trade Commission and public utility regulation. It should be mentioned that Don Turner has been an enormously influential factor in the economic analysis of law. It is interesting to me that his own ideas have been influenced by Aaron and his students and by George and his students, and today his ideas are not easily distinguishable from those of the Chicago school. But if you wanted to pick a single individual whose economic writings have been most influential on the legal profession in the antitrust area, it would be Turner.

The contributions for which Ronald is most well known precede his appointment at Chicago. The London School of Economics is important here. Guido Calabresi has been a very important figure. It is not the case that only people teaching at or trained at the University of Chicago have made important contributions to the field.

Manne: Another important figure was Louis Schwartz at the University of Pennsylvania, who was willing to go beyond cases to look at economics.

Posner: But you don’t want to equate law and economics with being willing to look beyond a case. If Louis Schwartz and Eugene Rostow are economists of the law, by that logic there are several thousand others that you have to name.


Manne: Well, perhaps you would name William O. Douglas. He wouldn’t have laid claim to that where Schwartz and Rostow certainly would, and I don’t know any other names of people of that era who were teaching in law schools who would have made that claim.

Posner: But there is a problem. When people talk about law and economics they often include as economic analysts of law the people who denounce the economic analysis of law. There seems to me something wrong with that use of antithesis to broaden the field. Louis Schwartz, Art Leff—these are people who make it their business to announce the inadequacy of economics as a way of studying the law. While that’s perfectly fine, I think it is confusing to classify that as part of economics.
MANNE: It’s part of the development of law and economics.
POSNER: That’s a Hegelian view, isn’t it [laughter]?
STIGLER: That’s the antithesis.
POSNER: Right.
FRIEDMAN: As a footnote, in the year I spent at Wisconsin, some of the people I found on the faculty there—this was in 1940—who were most interested in economics were two people in the law school: Willard Hurst was one, and he subsequently wrote a big book on the legal basis for the monetary measures,32 and the other was Charlie Bunn. Both of them were very much interested in economics, and I had more contact with them than most of the members of the economics department.
MANNE: So did I, when I taught there.
FRIEDMAN: Did you, too? When did you teach there?
MANNE: From 1957 to 1959. Willard Hurst laid claim to being very interested in economics.
FRIEDMAN: Yes, he was.
MANNE: Of course his familiarity with economics came from Witte and Ralph Schlburg and people of that school—Commons. He was certainly open-minded and interested in having someone with a different perspective on the matter.
To be more autobiographical, as far as I know I was the first person to go into teaching law with an interest in economics and not teach the antitrust course. I started with corporation law. I hadn’t really examined the area in any depth, but Wilbur Katz had given me to understand that there were a great many interesting issues there. And I thought it would be an appropriate way to begin to go to the library and begin reading the works other than Berle and Means on the economics of corporation law. And immediately I discovered that the library at St. Louis University was very much lacking—they didn’t have anything. I went to Washington University and strangely their library didn’t have anything either. I took a weekend off and went to Chicago and, again, there was nothing.
Chicago had not prepared me well, because I made one of the great mistakes. Speaking of naiveté, I said “Halleluia, I have discovered an area in which no one else has written. I will make a great success of myself by making this area mine.” There was only one problem. The only audience for it was me [laughter]. There was literally no one in the law-teaching world, with the exception of Wilbur, who continued to be very supportive, who had the slightest interest in what I was doing.

The first major paper that I wrote in the field was a critique of Berle and Means, among others. I sent it to Aaron and went to see him. He startled me by throwing it back and saying, "Well, we've got to go out and count these things and find out whether salaries are different in publicly held companies from others." I didn't know what he was talking about. The whole time I had been in law school that would have been the last thing in the world that Aaron Director would ever have said.

I suffered for some time until I began to realize that I was writing for an audience that didn't exist. Then a nice thing began to happen. George Stigler, Milton, Armen, had works of mine and invited me to conferences—which was not happening in law. I began offering articles to economics journals and found that there was considerably more audience there.

MOORE: We have gotten away from the chronology of events. Let's return to the substantive intellectual history of the antitrust field, particularly Director's early work. Ward, would you comment on that?

BOWMAN: Yes. I notice in the outline here the title "Director's early work—by his students shall you know him." In some cases that should perhaps read "excuse him." He's certainly not responsible for the fact that all of us have learned so much from him that we will always be in his debt. It happens that my name appears on an article on tie-ins. 33 Eighty percent of that article is Aaron Director, as I have acknowledged elsewhere.

The students—and I am glad to say I was one of them—of Aaron not only used his ideas beyond all reasonable expectation, we also discussed them and some of us like to think we carried them further. My impression of the tie-in field is that it is just one of a series of related subjects which Aaron is responsible for and which has been developed by colleagues of mine, McGee and Bork. It all started at the University of Chicago. The community effort of the little group that worked with Director was the most stimulating period of my economic education.

I should add that even before Aaron Director the essential economics of tie-ins were laid out by Judge Lurton in the button-fastener case. 34 He analyzed the essential economics of monopoly extension in a way that I don't think has been refuted in over seventy-five years. One of the interesting exchanges that Bob Bork and I have about this general field is

33 W. S. Bowman, Jr., Tying Arrangements and the Leverage Problem, 67 Yale L. J. 19 (1957).
34 Heaton-Peninsular Button-Fastener Co. v. Eureka Specialty Co., 77 Fed. 288 (6th Cir. 1896).
whether Lurton was more of an intellectual giant than Peckham.\textsuperscript{35} I’m for Lurton and he’s for Peckham.

I have changed my mind a little bit about tie-ins over time, and I think that the book \textit{Patents and Antitrust},\textsuperscript{36} which has a tie-in section, represents my current thinking. Since that is generally available, I won’t go into that.

\textsc{Bork:} What I did with Aaron’s group at Chicago in the law and economics project was an article on vertical integration.\textsuperscript{37} I cannot now recall exactly how that came about, although obviously the basic idea springs from the nonsense involved in the legal theory of the transfer of market power from one market to another—by foreclosure, leveraging, tying, and so forth—all of the various mechanisms the law has imagined.

It was that year 1953–54 on the project, when we talked to Director one-on-one, that was the most stimulating experience, more so than the classes.

\textsc{Moore:} What was it about the analysis that had such an impact?

\textsc{Bork:} It’s hard to answer that question. It was a new way of looking at the world, and an enormously rigorous and logical way, a method that seemed to promise further explanations of things if one pursued it.

\textsc{Director:} I want to protest—there wasn’t a new way of looking at the world, only an old way of looking at the world.

\textsc{Bork:} A new way of looking at \textit{this} world. I don’t know of anybody else who was applying it to this world. And it was a new way of looking at the world for those of us who bumped into you, but if you want to disclaim any originality, all right.

\textsc{McGee:} Can I contribute just a little bit on this subject? The antitrust project consisted of a relatively small band of what could be called “mixed cats.” How they ever came to be assembled there I never understood. There was John Jewkes, who had two young assistants, one Richard Stillerman, a young lawyer from the University of Chicago who acted as an aid in this country, the other a fellow named David Sawers who was a counterpart in Britain; there was William Letwin;\textsuperscript{38} Bob Bork;

\textsuperscript{35} Author of the Court’s opinion in its first antitrust decision, United States v. Trans-Missouri Freight Ass’n, 166 U.S. 290 (1897). Bork’s praise of Peckham’s work can be found in Robert H. Bork, The Antitrust Paradox: A Policy at War with Itself 22–26 (1978).


Ward Bowman; and myself. My experience started at that point with Bob and Ward and the others.

We were all thrown together in a relatively small group, housed together in cubicles on the main floor of the old law school. Ward had an office in the stacks with the rest of the long-term residents. We were stuck in cubicles. So to some extent discussion—amicable or not—was unavoidable. Aaron was accessible—to put it mildly—in his office. You could go to him and talk to him about things. It turned out almost without exception that he proceeded to explain to you, quickly, that what you had just said was dumb or in all events wrong and just why. So you’d leave that bunker and go out to the cubicles again and there would be much stirring, restorative stirring, among the junior members of this group to find out exactly what was said and what was to be done to repair your ego in the process. We drank a lot of coffee and some beer.

**KLEIN:** It seems to me that the first important contribution on vertical integration came not from Aaron but from Ronald in his 1937 article on the nature of the firm.\(^39\) The article seems to have been widely cited, it was reprinted in the American Economics Association readings,\(^40\) and it didn’t seem to influence anybody—everybody sort of nodded.

**STIGLER:** Not even Ronald.

**KLEIN:** Even Ronald [laughter]. In fact, twenty-five years later Ronald essentially restated what I consider the main analytical point there—that there’s a missing element in our models.\(^41\) You have to look at transactions costs if you’re trying to explain real-world organizations and real-world contractual terms. Dick mentioned yesterday that Turner was probably the greatest influence for lawyers. For economists I think most would agree that it’s the social cost article. But I interpret that article as just a restatement of the earlier article on the nature of the firm. In that article he was talking only about vertical integration, but it is the same exact analytical point about looking at transactions costs and the importance of such constraints on the trading process in trying to explain real-world institutions, including the nature of the firm. I would like to know what was going on for twenty-five years. Why did the social cost article have such an enormous impact but not the nature of the firm article—George was an editor of the AEA readings.

**STIGLER:** I chose the article, that’s true. I don’t understand Ben when he says that social cost was a simple restatement of the earlier article.

**KLEIN:** A complex restatement.

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STIGLER: Or complex. That reminds me very much of Johnson saying that Swift was not much of a writer because as soon as you thought of big people and small people, *Gulliver's Travels* followed obviously [laughter].

LANDES: I think Aaron's contribution to the theory of vertical integration was not explaining why firms engage in vertical integration but knocking down a lot of the discussion in the cases that argued that vertical integration was a means of leveraging monopoly to another level.

STIGLER: As soon as I came to Chicago, Milton Friedman was always chiding—to use a mild word—his brother-in-law for not writing his ideas up. "It belongs in the public domain," he said, and "if you don't write anything, you've got it coming." If quality is an increasing function of time, this was a method by which you create pearls, but it didn't work in this case.

DEMSETZ: I remember an interesting discussion at the Quadrangle Club as to whether or not a person retained the title to his ideas whether or not he wrote them up, and for how long, and whether or not it was sufficient if a student wrote up your ideas and gave you full credit in a footnote. I don't think we resolved that problem. We reached the conclusion that Aaron deserves every footnote that he gets [laughter].

FRIEDMAN: I think it is important to emphasize the role that was played not by analyzing particular issues such as tie-ins but simply by calling the attention of the economic world to the existence of a mass of data and information and problems in the legal case literature. To the best of my knowledge it was a source of articles in economics journals that had never been exploited before. I think it was only from the accident of Aaron's involvement in the law school, and that in turn calling attention to the interesting problems there, that that source came to be exploited more widely.

In addition to those we have already spoken of, there is the interesting problem of the aluminum decision\(^{42}\) and whether the secondhand aluminum served as an offset to the monopoly of the primary aluminum. And that continues to interest the profession to this day.

DEMSETZ: You asked the question in your price theory book, but you never put the answer in.

FRIEDMAN: Right. A lot of those questions that I asked in the price theory book and didn't provide the answers to derived from Aaron and have served as a source of numerous journal articles.

STIGLER: I think Milton is sliding over one point, and that is that there were plenty of writings on antitrust. Two books, for example, on the cigarette industry plowed through the ten thousand pages of that tran-

\(^{42}\) United States v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945).
The additional ingredient was that Aaron kept asking for a profit-maximizing explanation for the behavior, not just a detailed account.

**FRIEDMAN:** But that called into the picture a group of people who were not interested in these problems from the point of view of students of the tobacco industry, or students of the ICC, or so on, and who were general economists trying to find problems on which they could write for professional journals. This was a source of both the problems and data for analyzing the problems.

**DEMSETZ:** I think George put his finger on something that really was an important, implicit ingredient of Aaron’s and Ronald’s influence. It interrelates their methods. Although they seem to be different and to address different problems, there was a common theme, and that was to assume that people try to maximize and that really there is competition in the attempt to maximize, and to use those working assumptions to try to explain lots of things, like why you have firms, why you have particular pricing practices. All the conclusions derive from the attempt of maximizers to overcome certain kinds of costs impediments to maximizing which we now subsume under the name of transaction costs. These things become readily explainable—readily, that is, looking backward—if you take those two assumptions and keep pushing them. That approach was contrary to what was then the general approach in the literature, which was, every time you saw something that was peculiar in terms of the framework of the perfect competition model, to mystically conjure up the word monopoly and stop the analysis right there.

I think what went on in their work—and more generally at Chicago—was a refusal to use that short-stop method of looking at the problem. I think there’s a great deal of a common element in the analysis of vertical arrangements and the analysis of the problem of social cost or the nature of the firm, in the sense of looking at people trying to overcome the cost of making more efficient arrangements.

**BECKER:** Even in the monopoly case, it was often difficult to see how profit-maximizing behavior would lead to the particular arrangements. I remember on the tie-in, the initial interpretation that I heard at Chicago was price discrimination across individuals, and that seemed to explain some cases pretty well. But then there were cases that didn’t seem consistent with that. Then the issue was, if individuals were basically the same, could a monopolizing interpretation explain it, a method of using monopoly power in one market to squeeze out more consumer surplus. That

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interpretation came along, and that is what Meyer Burstein eventually wrote up.\textsuperscript{44} That was the second stage in interpreting it. So, whether there was competition or monopoly, the answers didn’t immediately spring forth, you had to interpret that consistent with rational behavior on the part of the participants. It was the efforts by the individuals stimulated by Aaron to try to give that interpretation that was important. Whether the answers were right or not in the particular context didn’t matter so much, but it stimulated a whole line of development which did not accept simple statements such as: Businessmen are irrational, they don’t know what they are doing. They know what they are doing. We don’t know sometimes why they’re doing it.

McGee: I don’t know what had been going on in Chicago before I arrived in 1953. I arrived there following a letter of inquiry from Aaron Director to the effect that he was interested in—and I think, more candidly, Edward Levi was interested in—something called monopolization. For some strange reason he wanted me to come back there to talk with him about possibly joining a small group to study this and other questions. I came back and was taken by Aaron and Milton Friedman to what I’ve since described as the longest lunch in the world [laughter]. They asked me what I had been doing, and I confessed to having finished a dissertation which I have always supposed they didn’t read or I would not have gotten invited back. Jesse Markham had striven mightily to correct it, but with little success. So I arrived with this baggage and Milton, I think in an effort to help a foundering youth, kept propping me up. Aaron kept chopping me down. That’s why it took so long.

Demsetz: Who wore whom out?

McGee: Aaron was relentless—nothing would do. You probably don’t remember this, Milton, but you even brought to my support the remote possibility that there might be some impediment in the capital markets [laughter]. It was a bad day.

Demsetz: And who did Aaron knock out?

McGee: Everybody [laughter]. It was clear from that exchange that Aaron had been thinking and reading a lot, long before I ever arrived on the scene. His office was in the stacks of a magnificent library. It didn’t improve the minds of everybody sitting there. He read the stuff, lots of it, and thought about it. He had been doing a tremendous amount of work when I arrived on the scene, through some mistake, no doubt. I ran into Bork and Bowman and the rest of these people churning about.

When I arrived I thought that the whole issue was monopolization. I

arrived on the scene confident that there was ever so much monopoly—malevolent—and that it could do almost anything you could imagine. The absolute dominant influence was that profit maximization, wealth maximization, became a constraint, and I had never looked at it that way at all. I don’t think Fritz Machlup did me any good on that point. He told me about a couple of hundred different kinds of price discrimination [laughter].

Stigler: He has since developed the subject [laughter].

McGee: That was absolutely the first revelation, and if Aaron had not done anything but that for me, that would have been a great improvement. So economics was a constraint on a whole bag of imagined activities which when subjected to that constraint started evaporating, or, as he used to say, crumbling in your hands.

He tried early in the game to get me to start work on the Standard Oil case, but owing, I think, to a more explicit contractual obligation to Edward Levi, I undertook to do something else on a somewhat similar topic. It wasn’t until very late that I ever came to what Aaron, if he ever wanted me in the first place, had wanted me there to look at.45

It’s quite fashionable, especially among younger economists, to say, for example, about the theory of social cost: “Oh well, that’s wonderful, but it’s so obvious.” Listen, I can tell you that some of us who didn’t have the advantage of good modern training didn’t find anything obvious about it at all.

Moore: Harold, could you talk about the notion of competition for the field?

Demsetz: It seems clear to me, although I can’t remember how or when, that this notion of competition for the field which is the subject of one of my papers46—it has turned out to be a surprisingly popular paper, I never thought it was really that good (which was no fault of Ronald’s)—came to me as a gift from Ronald.

Coase: No, if I might interrupt. What happened was that you developed the idea and I said, “You know that Chadwick had this a hundred years ago” [laughter].

Stigler: Credit it to Cairnes.

Coase: Well, it was even earlier in Chadwick. All I did was to give you that footnote47 and then someone else wrote an article saying that you had misinterpreted Chadwick [laughter].

47 Demsetz, supra note 46, at 57 n. 7, citing Edwin Chadwick, Results of Different Principles of Legislation and Administration in Europe; of Competition for the Field, as
DEMSETZ: Your footnote did me in [laughter]. Well, I withdraw the compliment. But this notion of the ever-present forces of competition, always left undefined unfortunately, or maybe fortunately, came out of both Aaron and Ronald's work and discussion and influenced me considerably. The competition for the field article clearly reflects that kind of discussion. It is difficult to attribute responsibility for ideas when we have these luncheons in which everybody is picking on me [laughter].

FRIEDMAN: Everybody else thought so too.

DEMSETZ: The ideas for my work on concentration\(^{48}\) really did start at Chicago. That was a reflection of the Neal report.\(^{49}\) When it came out there was lots of discussion around the table about the tension between the role of concentration and how the antitrust laws ought to take account of the long-standing correlations between concentration and profit rates. In those discussions, in which everybody was present, one of the things that kept occurring to me was, Why should an industry become concentrated? Second, there was some reference at the table to the fact that in some of those industries it was really only the dominant firm—for instance General Motors in the auto industry—that was getting the high profit rates, not the entire industry. This struck me at the time as being a peculiar result of a collusive arrangement, which I assumed was related to concentration because of their association in the literature.

POSNER: I associate Aaron with a number of specific ideas in antitrust that haven't been mentioned. For example, George's article on the dominant firm and the inverted umbrella in the \textit{U.S. Steel} case\(^{50}\) thanks Aaron for having supplied the basic idea. We always tend to associate Aaron with vertical practices. But the inverted umbrella piece is an example of a different focus of his thinking.

When I was at Stanford in 1968 Aaron was talking about how the law of price fixing was excessively preoccupied with the fact of an agreement and paid no attention to the effect of the agreement on output, and that it

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\(^{48}\) Harold Demsetz, Two Systems of Belief about Monopoly, in Industrial Concentration: The New Learning (Harvey J. Goldschmid, H. Michael Mann, & J. Fred Weston eds. 1974); Concentration, Oligopoly and Power (1979).

\(^{49}\) White House Task Force on Antitrust Policy, Report, printed in CCH Trade Reg. Reps., supp. to no. 415, May 26, 1969. This report, commonly called the "Neal Report" for its chairman Phil C. Neal, then the dean of the University of Chicago Law School, recommended adoption of a Concentrated Industries Act designed to reduce concentration in any industry in which any four or fewer firms had an aggregate market share of 70 percent or more. Neal taught the antitrust course at Chicago with Director in the 1960s.

\(^{50}\) George Stigler, The Dominant Firm and the Inverted Umbrella, 8 J. Law & Econ. 167 (1965).
ought to be possible for economists to help judges and lawyers actually measure the effects of price fixing and distinguish the trivial conspiracies and hopeless attempts from the substantial restrictions on output. It has now become common in antitrust cases for economists as expert witnesses to try to establish or refute the existence of a conspiracy by looking at the changes in the market, in price and output, the presence of price discrimination, and so forth. That, I think, is a recent legacy of that kind of thinking.

John McGee's study of the Standard Oil case was the first in a group of skeptical case studies which I associate with Aaron, and later with Ronald and with John Peterman's studies of the Brown Shoe record and the Procter and Gamble record. These had a debunking effect, and I think they affected how the profession thinks about antitrust.

Aaron's skepticism about government has, I think, affected people as to what they think about divestiture and very elaborate antitrust remedies. The notion of deconcentrating the American economy through a new statute, an idea now in the dustbin of history, is an idea that Aaron and his students were firmly opposed to.

Aaron suggested to me that I complete a project that he had started with a student. That was to do some descriptive statistics on antitrust enforcement, using the CCH Bluebook, a catalog of all the Department of Justice antitrust complaints, to see what had been the focus and characteristics of Department of Justice enforcement activity. This type of study of the enforcement process has now become a small field of study.

I had always thought of Lester's resale price maintenance, his theory of dealer's services, as Aaron's idea. I'm assuming this is true. That idea, first developed by Lester and then popularized to lawyers by Bob Bork and others, has apparently had an impact on the Supreme Court and led to a significant change in antitrust policy. That's the most direct evidence I can think of that these Chicago ideas actually found their way to the Supreme Court and changed the law.

51 John Peterman, The Clorox Case and the Television Rate Structures, 11 J. Law & Econ. 321 (1968); The Brown Shoe Case, 18 J. Law & Econ. 81 (1975).
52 See note 49, supra.
I think the method of teaching antitrust that Edward Levi and Aaron pioneered, the joint teaching where the economist is actually commenting on cases, has had an impact on the way in which economics is used in law. That is quite a different approach from one where the course starts out with a brief introduction for the student of the ideas of economics and there’s no further application to specific cases. So, in all these other ways, aside from the work in the early fifties, Aaron’s influence has been very extensive. Aaron has also had a considerable impact on George’s views and George’s writings on antitrust, which have had a large influence on the way economists think about these problems.

MARKHAM: I think Aaron Director’s views on predatory pricing did spread to Don Turner, and perhaps Phil Areeda, in this regard. Don Turner and I used to have lunch about every two weeks, and our opening question to each other was, “Have you found any predatory pricing recently?” And I told him I had been searching for thirty years and hadn’t found any. That could have been due to the deficiencies in my search.

When Don and Phil published that article on the test for predatory pricing, their underlying reason was that it is so seldom found and so much effort has been spent looking for it or accusing industries of engaging in it that you ought to set a test—as a managerial rule for the courts—so stiff that you would never find it anyway. That would settle it once and for all. You can’t really imagine firms selling or pricing below marginal cost, and if you use that as a test, then there is no predatory pricing. You define it for judicial purposes out of existence.

POSNER: Jesse is right. I believe no plaintiff has won a predatory pricing case since the Areeda-Turner article.

FRIEDMAN: Predatory pricing is alive and well in the international area.

DEMSZT: It’s always easier to find a predator when he’s not part of your group.

FRIEDMAN: “Everyone knows” that the Japanese automobile companies are engaging in predatory pricing.

COASE: When I first came to Chicago, in the industrial organization workshop, people used to talk about monopoly and concentration and trying to associate differential profits with the extent to which there was concentration. This sort of point used to come up from time to time in various papers, and I used to say then that monopolizing was a competitive industry, and I said this on various occasions. But as no one ever listened, I gave up saying it. And they went on discussing concentration.

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DEMSETZ: That's where my competition for the field came from. See, there was a deeper origin to it.

COASE: Well, I'm not sure about that. The fact of the matter is that there is not so much talk about the relation between concentration and profit rates as there used to be. Maybe it is Harold's influence, but it is a good thing.

FRIEDMAN: I want to point out some broader implications and get off the narrow monopolization field. There is a link which goes in an entirely different direction, and that is toward the economic analysis of political institutions. Work that was pioneered by Jim Buchanan, Gordon Tullock, Gary Becker, and George Stigler, plus the whole movement toward rent seeking. The articles move out of the monopoly area and into the area of government policies in general. Why is it that these enormous transfer expenditures seem to leave nobody better off in the government area, and the major explanation that has emerged is the notion of rent seeking, that is to say, that people devote resources to acquiring the government transfer just as they do the private transfer. That has become, I would say, one of the growth areas in the scientific discipline, the economic analysis of political arrangements. I hadn't quite realized before how close and direct were the links between one and the other. Now I don't mean links in a history of thought sense, necessarily, because some of the work done has altogether different origins. From an analytical content point of view, these are the same basic propositions in different forms.

STIGLER: I think that Director's law of income redistribution has implications for some of these questions that are not fully developed. And that points out the disadvantage, Aaron, of letting your students write up your ideas.

I think that if Aaron and then later Ronald had been at Yale or Harvard or Stanford they would have been much less successful even though they were in first-class intellectual communities. And the ingredient that I don't think has been given proper attention was the presence of Milton. Milton was teaching an enormously influential and powerful course in price theory, or at least so it is alleged by him [laughter]. If he had been what he likes to call a Walrasian instead of a Marshallian, the intellectual atmosphere would have been very inhospitable and uncordial to this kind of development. As it was, a lot of Milton's very good students had open ears and very great receptiveness to this because these kinds of problems and these kinds of approaches were the staff of life in the course he taught. I think if there hadn't been that strong tradition in modern price

theory, applied realistically and ingeniously over a wide range of phenomena, that that would have been a lone colony of much less influence over in the law school.

Friedman: Gary Becker and I have a footnote, especially to George’s erroneous comments. The real tradition of Marshallian as opposed to Walrasian analysis of economic problems at Chicago began with Jacob Viner. It was Viner’s teaching of economic theory at Chicago for many years which made that a basic tradition there. George and Allen Wallis and I, Aaron himself, were all influenced by that as students at Chicago.

Moore: Ronald, would you comment on the London School of Economics and your training there?

Coase: Yesterday I explained why I didn’t give anything to the University of Chicago Law School, although some students suggested that I had. It was one of those results that was produced, although it was not part of my intention. Now I would like to explain why the University of Chicago didn’t give me anything [laughter].

To do that I really have to explain what it was that I got at the London School of Economics and who the important people were there and what was going on. I think it has some interest because it resulted in the types of problems which are discussed in America arising in a completely different context, and in some ways a context which was more conducive to getting the right answers.

I started studying economics at grammar school, that is to say, high school. I was then in the sixth form and preparing for the University of London examinations. Incidentally, my schoolmaster had studied with Dalton at the London School of Economics where he had taken a degree.

I remember being taken by him in about 1928 to the London School of Economics to hear a lecture there which was introduced by a very impressive man—I still have a vivid impression of his personality—Allyn Young—who spoke, interestingly enough, about the Austrians and the importance of their work. The reason he did this was that he was introducing von Mises, who then gave a lecture. I didn’t really understand what von Mises was talking about, partly the accent, partly the noise of building that was then going on, and partly I suppose that I wasn’t equipped to understand the subject.

In those days, before the modern educational reforms, the English educational system was actually pretty good [laughter]. One could learn things at school. I then went on to the London School of Economics and took this degree of Bachelor of Commerce, which also was a very good degree because in it—it had been founded after the end of World War I because the business community was willing to give money for it—you studied statistics, accounting, history, economics, law, and so on. It was
an excellent degree and has since been abolished [laughter]. I may well be one of the last people to hold that degree.

It included the study of law. I went to these law courses, they were all given by I might say distinguished lawyers. I took contracts from a man called Gutteridge who was a K.C. and who later went to Cambridge to take the chair in law there. And the other lawyers at the London School of Economics had a similar stature. They were extremely good, and I do feel that there’s a great advantage if you’re taking law courses from not taking courses which are designed for economists but to take the regular courses which are given by professionals. I was very interested in these courses. I spent much more time on law than I ever spent on economics. I read these cases, I followed back the precedents, I discovered that a rule which was now being applied in one circumstance was originally founded to deal with something quite different and that there was no relation between the original rule and the way it was being applied. I did all this sort of thing, and I very much enjoyed it.

When I came to write social cost, it was really very easy for me to do it. I was familiar with the cases. I even remembered many of their names, the way one does things one learns in one’s youth. But I didn’t do anything with it at the time.

I was very interested in law. I almost became a lawyer. Having taken some of my university work before I went to the university, I got through the courses in two years, which wasn’t as unusual as it might seem now. Therefore I had an additional year, and what I decided to do was to take a B.Sc. in economics specializing in industrial law. Had that happened, I would have become presumably a lawyer.

It so happened by chance that I got awarded a traveling scholarship on the basis of the examinations, and I went then to America. The subject I chose to study was vertical and lateral integration and out of that came the firm article. I went to America in 1931–32 and got all of the outline of the firm article by the end of 1932.

I said earlier that I haven’t got anything from the University of Chicago. That needs qualification. There are at least three areas where my views have been changed since I came in 1964. One I would say is in relation to advertising, where I am much more likely now to think of the informative aspects of advertising than I would have done before.

On the other hand, it’s a little hard to say that this is what Chicago gave me because my original views on advertising had been formed by reading Frank Knight [laughter]. You might have thought I got my views from Marshall and Pigou, but that wasn’t true, I got it both from studying

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59 The Sir Ernest Cassel Travelling Scholarship awarded by the University of London.
particularly *The Ethics of Competition*\(^{60}\) and actually having heard Knight in 1932 at Chicago. I didn’t hear him very often because he held a very early morning class, and I didn’t often get to it. On my scholarship I came and visited Chicago, and I saw Viner and chatted with him and also attended a few classes of Knight. I think the only person I talked with was Viner.

**DIRECTOR:** You must have been a recluse even then because none of us knew that you were at Chicago in 1932.

**FRIEDMAN:** What part of 1932 was it, Ronnie?

**COASE:** The early part.

**DIRECTOR:** I was there.

**DEMSZETZ:** Then we had two recluses [laughter].

**COASE:** I think my views on both antitrust and regulation have changed, in part because I really didn’t have very clear ideas on either of them before I came to Chicago. If people had asked me what did I think of antitrust laws, I would have said I favored them. After all, I favored competition and they produced competition. Regulation, I would have had the sort of woolly ideas that floated around at that time, I suppose. They weren’t subjects that particularly interested me, but I would say that my views on those subjects have formed since coming to Chicago.

I mentioned the fact that I was very interested in law and studied it at the London School of Economics. However, in view of what happened afterwards, it’s what they gave me in economics which was important. I think what I got in economics is in a way very strange—it couldn’t have been done anywhere else. First of all, owing to the influence of Lionel Robbins, the two main books that we read were Knight’s *Risk, Uncertainty and Profit*\(^{61}\) and Wicksteed’s *Common Sense of Political Economy*.\(^{62}\) That is a very strange combination of books to be brought up on. It says a great deal for Lionel Robbins that he did this. I once asked him how did he ever come across Knight. He said he once had to review a book by Dobb on the entrepreneur. There’s a reference there to Knight. He looked up the reference, and that’s how he got hold of Knight. Of course, Wicksteed is easier to understand. Those were the two books we read, and for me they were both important and I studied them very carefully. Knight happens to be one of the most important influences in developing my views.

\(^{60}\) Frank H. Knight, *The Ethics of Competition and Other Essays* (3d ed. 1976).


The personal influence there came through Arnold Plant. Like Aaron, he didn’t write all that much, but his influence was very considerable, certainly on me and certainly on a number of other people. I can instance what happened by the example of the first seminar of Plant’s I ever went to. We had been having a seminar previously by a man called Sargent, who was a Professor of Commerce there. And Plant said, “What have you been discussing?” And I said, “Oh, we’ve been discussing policy in the oil industry. We’ve been contrasting the fine conservation policies which are carried out by the Anglo-Persian oil company with the wasteful policies that they pursue in the United States.” And Plant said “Well, that is very interesting,” and then he started asking a few questions.

After a little bit we discovered that the oil companies weren’t maximizing their profits [laughter]. And then we discovered that the government knew more about the oil industry than the oil companies did. That seemed odd. Even worse, that we knew more than the oil companies did [laughter]. That was hard to take. Then we learned, of course, that—and people don’t always know this today—a large part of the cost of producing oil is the present discounted value of the future receipts, and so on.

It took people like myself, my friend Fowler, and others, you know, we got this in about an hour. And then by the next class we were chasing all the less nimble members of the class around when they said things, you see. That was terribly important. There were typical “Chicago” lessons that I really didn’t have to learn, and I got them through Plant.

There was another aspect that I think is interesting—a little pamphlet which I’ve just been showing to Aaron illustrates this. There was no antitrust law in England, and we didn’t have the monopoly problem in the forefront. When we discussed, as we have here, a pamphlet on the British United Shoe Machinery Company and its leasing practices and so on, we discussed them as business practices. We didn’t always get very good explanations of why they existed, but we studied them in a different way from thinking immediately of monopoly or monopoly problems and antitrust laws. Not that we were unaware of these things, and not that there isn’t a British literature which does deal with the trust problem and so on. But somehow it wasn’t in the forefront of our minds, and we came to think of the economic system, broadly speaking, as a competitive system and to explain these practices within the context of a competitive system. I think that was really a great advantage, from the point of view both of the law and of the economics. There is a sense in which I didn’t need Chicago.

FRIEDMAN: Plant had just then published those articles on patents and copyrights?⁶³

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⁶³ Arnold Plant, The Economic Theory Concerning Patents for Inventions, 1 Economica
COASE: They came afterwards. He was working on those at that time.

LANDES: Ronald, you mentioned Frank Knight’s *Risk, Uncertainty and Profit* as an important influence on your work. One of Knight’s papers that has been most influential in the recent law and economics area is his paper, “Some Fallacies in the Interpretation of Social Cost.” That was in some ways a forerunner of your paper on social cost because it spells out the importance of property rights in resource allocation, and I wonder if you were familiar with Knight’s article?

COASE: Oh, yes. In fact, I would say that the title of my paper came from Frank Knight, and the title of the paper was rather to indicate the topic I was talking about, because, of course, I don’t think the concept of social cost is a very useful one, and I don’t ever refer to it. But it did indicate to people what I was talking about. I knew it, and if there are traces of what Knight says in my work, it wouldn’t surprise me.

FRIEDMAN: It would surprise you if there weren’t, wouldn’t it?

COASE: Yes, that’s right.

KITCH: I would like to put a question which I first heard posed by Aaron. Why is it that law and economics first arose in the United States when, as Ronald just described, the London School of Economics, and even more so Continental universities, offered instruction in law and in economics in the framework of single departments? You would think that if you wished to stimulate interaction that was the optimum environment, and that the American environment, in which law has been offered in a highly professional, distinctively separate school, would be a very unfavorable environment. My impression is that the Continental tradition has not been as vigorous or as effective. Aside from Hayek, there haven’t been important contributions from that tradition. Aaron, you raised that question with me some months ago.

DIRECTOR: Yes, but I don’t know what the answer is. All I have heard recently is that there is now a considerable movement to introduce what you people call law and economics into European universities and that there is great hostility to it there. The hostility stems from the fact that law and economics is considered to be the equivalent of an interest in private enterprise and that therefore they are reluctant to develop it because it might interfere with other things.

COASE: I don’t know about the Continent, but I might add something about Britain. The antecedents to events when I went to LSE have been left out. One has to realize that British economists have never been hos-

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30 (n.s. 1934); The Economic Aspects of Copyright in Books, 1 Economica 167 (n.s. 1934); both reprinted in Arnold Plant, Selected Economic Essays and Addresses (1974).

64 Frank H. Knight, Some Fallacies in the Interpretation of Social Cost, Q. J. Econ. (1924), reprinted in Readings in Price Theory (George J. Stigler & Kenneth Boulding eds. 1952).
tile to the study of law, in fact, they have always encouraged people. They thought that economists ought to study law, or at least they used to. Edwin Cannan, who was the professor that Plant studied with, and also Lionel Robbins—although Robbins has gone off in a completely different direction—was very anxious that economists should study law and supported the development of the law faculty at the London School of Economics. When Marshall, for example, was introducing the economics tripos he wanted law to be in it. There was a dispute between him and Maitland about how it should be taught. Essentially, the older generation of British economists were not hostile but welcomed the introduction of law into their studies.

However, that influence has really disappeared. Somehow that aspect of Cannan’s work was not followed up by Lionel Robbins and the modern generation. Basil Yamey is interested, but he was a student, not of Plant, but of Hutt, who was associated with Plant. By and large the economists at LSE are not interested. So if law and economics is to start again in England, and I believe it is starting, it comes now via the United States. If it hadn’t died there, that wouldn’t be necessary.

DIRECTOR: It should be added that many of the leading English economists were very competent lawyers.

STIGLER: In general, economists have had a terrible time explaining the incidence of strong, flourishing traditions of an intellectual discipline in one country and not in another. Why should economics have been much stronger in Italy than in France, and so forth?

Somebody like Wicksell, who was perhaps Sweden’s premier theorist, after he got a degree in mathematics and had written a famous book on Rent and Capital, had to take a full year out of his life to study Swedish law before he could become a professor in a Swedish university. That was a requirement. He emerged from that process, I assume, with an undying hostility toward the law [laughter]. I don’t recall his having mentioned law as an intellectual discipline for the rest of his life.

KITCH: Was the German historical school that you mentioned earlier the only notable Continental example of what we might call law and economics?

STIGLER: It was law and economics bound into the same book. There was an English version of it, too, by the way. There were people like Cliffe Leslie and Cunningham and a couple of economic historians and the like, and Bagehot, in a way, became the English historical school. While they talked a lot about the importance of studying environmental conditions and the like, they paid no real attention to the institutions of the law.

FRIEDMAN: In the French tradition, although economics was in the law school, the French economists who amounted to anything all came from
engineering or mathematics, whether it's Cournot or Walras, or Pareto—well, he was Italian, but he came from engineering. Deupuit was an engineer. In the French case, I don't think there were any economists who came out of the law schools. Were there, George? You know better than I do.

Manne: Ronald, you suggested that Lionel Robbins took a position on this.

Coase: I don't think that Lionel Robbins was ever interested in the relationship of the legal system to the economic system. I don't think he ever was. He was very influential, and it was a very good period for me to have an association with him because in the early thirties he took very strong positions on everything. I mean, you knew where he stood. Lionel was appointed to the chair in 1929 after Allyn Young died. There was great opposition to his appointment because he was so young. He was about thirty at the time. In order to accommodate him, they set up two chairs. A senior professor of economics and a junior professor of economics. They appointed Lionel to the junior chair, and they never filled the senior chair [laughter]. Dalton, commenting on this, said, because Beveridge was director at the time, that Beveridge always preferred a middle-aged failure to promising young men [laughter].

He had just been appointed when I went as a student. On free trade, it didn't matter what he spoke about, you knew just where he was and what side he was on. You could agree or disagree, but you knew where he was.

Hayek was also very influential for me. I was lucky because he came when I was still a student. He gave lectures in February of 1931. We had just had Viner on international trade, and they were both terrific series of lectures. This seems difficult to believe, but Hayek's outshone—in terms of the effect on people there—those of Viner. That was because he lectured about the capital structure of production, all that sort of thing. That didn't really influence me for more than a year.

Later Hayek was terribly important at the London School of Economics in ways that perhaps people wouldn't realize. He helped to make our theory more precise. That is surprising when you think of Road to Serfdom and all that sort of thing. Really he was very important. Our theory was very sloppy, and Hayek did a lot to improve things. Hicks was also working there, Kaldor was working there, and Lionel was doing a lot of very good work, so it wasn't just Hayek. But Hayek played a very important part in that, but not in anything we call law and economics. It was really on improving our theory.

65 Hayek, supra note 25. The Road to Serfdom was a passionate attack on anticapitalist social theories.
LANDES: Wasn’t Abba Lerner\textsuperscript{66} there?

COASE: He was a student at the same time that I was. He was older, and
he was quite the brightest student of my time at LSE. He was very bright,
very good to discuss things with. We tended to disagree, but we always
had the happiest of discussions. He came late, having been in a printing
business that had failed. I afterwards said it was because he set price
equal to marginal cost [laughter].\textsuperscript{67} But that may not be true. The fact of
the matter was that he absorbed what was going on there, and he was very
good, and of course in a little bit he was contributing too.

STIGLER: As Ronald recounts his indebtednesses I am reminded of the
statement Leslie Stephen once made. He said he could never understand
why a school was credited with producing those people it had not suc-
ceeded in repressing [laughter].

BLUM: What was going on at Oxford and Cambridge at that time?

COASE: I don’t know about Oxford. Cambridge, I knew enough from
people who had gone there. Marshall had wanted to encourage the study
of law. When Pigou took over that seems to have disappeared. Dalton,
when he came to London from his degree at Cambridge, said, “I didn’t
get this notion that the legal and economic systems were interrelated
when I was at Cambridge. I got it after I left Cambridge.” It’s obvious to
anyone who knows Pigou that he isn’t interested in this subject.

MOORE: What factors account for the demise of law and economics at
LSE?

COASE: The economists aren’t interested any longer. I wouldn’t have
thought that what has happened to LSE economics is any different from
what has happened to economics in most of the departments in the United
States. There isn’t any interest in most departments of economics in law.
The department there has become like any other department in the west-
ern world.

MOORE: Aaron, I know you were involved in the decision to bring
Ronald to the University of Chicago. Will you comment on that?

DIRECTOR: I spent some time in the middle 1930s at the London School
of Economics. Unfortunately, Ronald was not one of the people that I got
acquainted with. He was then interested in quantitative economics, and I
was supposed to be writing a history of the Bank of England.

Ronald came to the United States immediately after the war, and I
knew enough about his work by then that I recall writing a recom-

\textsuperscript{66} Presently professor of economics, Florida State University. Professor, University of

mandation for his appointment at the University of Buffalo. Then he was there, I believe, for some time.

Coase: That was 1951.

Friedman: That's where Fritz Machlup was.

Director: Then he went to Virginia. Early in the 1960s, I think 1961 or so—I knew Ronald's work much better by then—whenever I needed an article in order to get out the Journal of Law & Economics I just corresponded with Ronald [laughter]. I was already thinking of whom my replacement might be, and I preferred that it be a person like Ronald. There was discussion at the law school, and the main opposition was due to the fact that one economist was enough. I pointed out that it would be only a short period of time. So Ronald was offered an appointment in the law school, maybe in 1961. He accepted it, but then, not knowing about transaction costs at the time, he rejected it [laughter]. He didn't realize what the consequences of that would be.

Two years after that incident I heard there were some squabbles at the University of Virginia and Ronald might be interested in leaving. I then used what little influence I had to get negotiations resumed. Ronald accepted.

Coase: I was glad that Aaron referred to the fact that I was one of the pioneers of the quantitative method in economics. It tends to be forgotten [laughter]. I remember Aaron coming at that time to the London School of Economics. We didn't have very much contact. Lionel Robbins had introduced him to us in sort of hushed tones as a high official of the U.S. Treasury Department.

Director: Ex high official.

Coase: I thought of him accordingly [laughter]. Your interests seemed to be very different from those that I had at the time.

Friedman: Aaron, you got close to Arnold Plant during that period. Ronald was apparently close to Plant. Why didn't that bring you together?

Coase: I can't explain that. Perhaps Plant wanted also to know a high official [laughter].

Stigler: Ronald, I had the impression that the first offer to you was made when you were at Buffalo.

Coase: Yes, that's right. I'm ashamed of the fact that I accepted and then rejected, which isn't the right thing to do.

Director: Ashamed! It's uneconomical [laughter].

Coase: That's a reason for shame [laughter].

Moore: Let's turn now to the Coase period at Chicago. Ed Kitch, would you comment?

Kitch: Ronald related to the law school in an entirely different way
from Aaron. Ronald has largely worked through his writings. I think his impact on Chicago has been as an exemplar of a particular kind of scholarship, evidenced by his published works.

His editorship of the Journal of Law & Economics was a very important contribution. When he took over the editorship, the Journal was still in its formative years.

Friedman: How many years behind was it?
Voice: One or two.
Director: No.

Coase: It couldn’t have. It hadn’t been in existence for that long.
Kitch: He worked very industriously on building the Journal up, and between that and his own work most of his energy was consumed. He is not a man like Aaron whose influence has come through oral and teaching interaction with a large number of students passing through Chicago. It has come through the example of his writing.

One of the problems with following his example is that he has never shown how to get the cost function of producing articles of his type down. It requires that one learn a great deal about the subject one is addressing. It takes a great deal of time to complete. If number of articles is an important parameter of measured output, people who follow Coase’s example have a large comparative disadvantage.

Ronald, how did the social cost article68 come about?

Coase: What happened was that I had originally put forth these ideas in a shortened form in the article on the Federal Communications Commission.69 It was intimated to me that these views were an error.

Friedman: Who intimated that?
Coase: I think Aaron.
Stigler: Aaron was also discussing it with us.
Director: Yes.

Coase: I said that it might be an error, but if it’s an error it’s an interesting error and I would just as soon it stayed in [laughter]. Actually, I think the man who really wanted it out was Reuben Kessel.

Director: I think that’s right.

Coase: I think he was the one who pressed hard for excluding it. That doesn’t much matter. The fact is that there were these intimations to me that my views were wrong. George then asked me if I’d come and give a paper or present something at the Industrial Organization workshop. I said I’d come along if I could also on some occasion present my views on

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68 Coase, supra note 40.
this other question. Aaron assembled a group of people at his home. George and Milton were there, Reuben was there, McGee was there.

DIRECTOR: Lloyd Mintz was there, I think. Gregg Louis was there.

McGEE: Arnold Harberger was there.

COASE: I can't remember everybody. I presented my views there and I had a very difficult time with Milton. He grilled me for half an hour or more, but when I was still standing at the end of that I felt I was home.

STIGLER: The seminar was one of the most exciting intellectual events of my life. When, in 1960, he wrote to Chicago and said, "OK, I'll give a dull workshop if you'll let me talk about why the passage in my FCC article was not wrong," that was arranged. It was a compliment to you, Aaron, that a group of really quite remarkable analytical powers formed at the time. As Ronald says, it contained Aaron, Milton, John McGee, Gregg Louis, Reuben Kessel, Al Harberger, Martin Bailey. It was a collection of theorists who were simply superb.

At the beginning of the evening we took a vote and there were twenty votes for Pigou and one for Ronald, and if Ronald had not been allowed to vote it would have been even more one-sided.

The discussion began. As usual, Milton did much of the talking. I think it is also fair to say that, as usual, Milton did much of the correct and deep and analytical thinking. I cannot reconstruct it. I have never really forgiven Aaron for not having brought a tape recorder that night. He should have known this was going to be a great event because he is a wise man. My recollection is that Ronald didn't persuade us. But he refused to yield to all our erroneous arguments. Milton would hit him from one side, then from another, then from another. Then to our horror, Milton missed him and hit us. At the end of that evening the vote had changed. There were twenty-one votes for Ronald and no votes for Pigou.

COASE: After that seminar, Aaron said, "Would you write this up for the Journal," and I wrote it up in the summer of 1960. Because I took very seriously this notion that the Journal was behind and ought to come out, I wrote it in three parts. I wrote the first part and sent it off to Aaron, wrote the middle part and sent it off to Aaron, and wrote the end, and sent it off to Aaron. I completed the first part of it before the other two-thirds were finished. Of course I knew my general line.

Owing to the fact that an idea has gotten around that the Journal was quite late, people have tended to exaggerate the extent of it and in a number of places have said that the Journal in which my article appeared came out in 1962 although it was the 1960 issue. Actually, as I know, it came out very early in 1961 because I have correspondence from England discussing the article dated May 1961.
I began writing the FCC paper and developing the ideas while I was at the Center for Advanced Study in Palo Alto in 1958–59. Milton and George had been there the year before, and they had recommended that I go there.

ZERBE: When I came to Chicago in 1969 I was impressed how hard Ronald worked on the Journal. Much of his time was devoted to improving the quality of articles that had come in. They often required extensive correspondence with the authors.

Although Ronald is not noted for an oral tradition, one of the advantages of associating with him is that you picked up his unusual way of looking at things. He had a gift for making the comment that most people weren’t thinking of. He had a different way of looking at problems that was very valuable.

COASE: I had an extraordinary piece of luck that when I came to the University of Chicago there were a large number of law professors who were interested in economics—Ken Dam, Ed Kitch—then Dick Posner came along. It had nothing to do with me at all, but it was very helpful to me. I worked with Ken Dam quite a bit, a little with Ed Kitch, and not at all with Dick Posner. It was luck that this group was at the law school, and without this group you would not have seen much going on in law and economics at the law school. The difference between Aaron’s period and the period I was there was the interest of the law professors in economics. Their contribution should be noted.

MANNE: You say it was luck. It may have been from your perspective. Obviously it was not just luck that Dam, Kitch, Posner, and others were there.

PRIEST: When I was a student, after Ronald had come, it was impossible for any student to fashion a curriculum that did not include a number of courses taught with substantial economic content. It was entirely possible for some very interested students to fashion a curriculum which consisted entirely of economics classes, ignoring the standard law school curriculum altogether. I think that’s had an important impact on people of my vintage who have entered the teaching profession, classmates of mine such as Frank Easterbrook, now at Chicago, Doug Ginsberg, at Harvard, as well as myself. We have a strong interest and are attempting to practice economics in our scholarship. That’s been an important impact of putting together this large group of people—Dam, Kitch, Posner, and Ronald—all at the same time.

KLEIN: When I was a law and economics fellow around 1975, I was amazed to go to a law school where so many people were interested in economics.

I interacted with a few students even though I wasn’t teaching. The
University of Chicago has a unique physical arrangement. The offices are around the outside of the building and the stacks are in the middle. It minimizes interaction with other faculty. On the other hand, there are students working right outside your office door. On one particular occasion I started talking with some students and they were totally unaware that this great man, Ronald Coase, was on their faculty and—this is the truly amazing thing—they had never heard of the Coase theorem. There is no way you can go through the UCLA law school and take a course in torts without hearing about the Coase theorem. I don’t know who was teaching torts at the time.

Priest: I think Dick Posner was [laughter].

Klein: I don’t think Ronald had an influence on most of the students.

Landes: At that time Ronald wasn’t teaching.

Coase: Yes, by then my arrangements were for research and editing the Journal. I had had an offer from another university for a position without teaching duties, and Phil Neal matched it exactly, perhaps too exactly.

Cheung: I was at Chicago during the sixties. I think the greatest influence he had on me, other than long conversations clearing up for me his argument on the nature of the firm, contracts, and so on, what was particularly important was his emphasis that you have to try to understand what is going on in the real world. Ever since then I have been digging and digging.

During my second year at Chicago, Coase and I were invited to attend a fisheries conference at the University of British Columbia. Coase was allergic to flying at that time, so we had to take the train, a very costly way to go to a conference. Our concern was that this conference was supposed to include the best fisheries economists and experts in the world, but the two of us knew nothing whatever about fisheries. I went to the library and wrote letters and assembled documents on fisheries—the regulations, the unions, and so on—and I remember turning over the pile of material to Ronald. We showed up at UBC with all the giants in the field, having read all these materials but feeling we knew nothing about it.70

The first morning of the conference we went into a room at UBC overlooking the water and the mountains and all of the sudden someone looked out the window and said, “There’s a fishing boat down there.” And all the leading fishery economists rushed to the window to look at that boat. I was truly relieved that all the greatest experts on fisheries in the world had never seen a fishing boat before [laughter].

It was on the trip back from UBC, talking generally about the total ignorance of economists about facts, that we talked about the case of the bees. I thought he was going to do it. So I didn’t pay much attention. Then someone mentioned he had a relative who had an orchard and rented a beehive. So I called Coase and he said there was already someone working on that. Then Coase received the paper,71 and Coase wasn’t completely satisfied with it and invited me to work on it. I was host of a party, and Coase called me and read the whole paper on the phone. So I took on the bee project and knew the kind of job he wanted because of his persistent emphasis on our having to know the facts. It was a delightful experience writing that paper.72

LIEBELER: When I was in charge of the planning office at the Federal Trade Commission, I went to Chicago to interview the students. I may have had a skewed sample of students because they were interested in working for the Federal Trade Commission, but they didn’t seem to be interested in economics. I played a very nasty game with them. I asked them if they had taken antitrust. They said yes, most of them, and then I said, “Who are you taking it from?” And they said, “Dick Posner.” They didn’t know that that put them in an awkward spot. I went up to Kitch’s office afterward and asked him what in the world was going on, all these marvelous resources around here having no effect on the students whatsoever.

KITCH: You have to understand that the development of a substantial scholarly and intellectual enterprise within a law school is something that is taking place in a basically hostile terrain. You have an institution whose primary focus is the large-scale training of professionals for practice, which is attracting to it students who have very immediate, pragmatic professional goals and who are not interested in modeling themselves on the style of scholars or of teachers.

Law students either assume that their professors in law school are teaching because they can’t find positions elsewhere or else have odd tastes with which they don’t identify.

Law schools have not had very clear models for the activity of being a legal scholar, at least as something that is identifiably different from being a practicing lawyer. Historically, the professor of corporations law or contract law would be rather indistinguishable from a good lawyer in a firm who worked in those fields, in the kind of material he consulted, the kind of things he thought about, and the kinds of things he wrote. Indeed,

71 David B. Johnson, Meade, Bees, and Externalities, 16 J. Law & Econ. 35 (1973).
72 Steven N. S. Cheung, The Fable of the Bees: An Economic Investigation, 16 J. Law & Econ. 11 (1973).
if you look at the legal literature it is sometimes produced by practitioners, and their work is indistinguishable in style and content from what would be produced by someone in a law school.

The only area in law schools where there has been an identifiable and distinctive intellectual tradition has been in constitutional law. The constitutional scholars have been the Dukes of law schools. They address questions of political theory and larger policy within the context of their field. The rest of the people had a more confined and limited calling.

I remember a discussion early in my career with Ken Dam about the problem of what one does as a law professor. People arrive in law teaching, unlike other academic fields, without having gone through a modeling period of explicit training for the activity of scholarship, research, and teaching. One is hired as a promising prospect without ever having done a piece of scholarship and with a generalist training. So the question a young law teacher has to ask early on is, "What am I going to do?" Ken said, "I don't think I'm going to do constitutional law, I want to do harder, more rigorous stuff. It seems to me the area of regulation offers a chance to develop an understanding of important material and relate it to law."

I found that very persuasive. I think that came out of the tradition of Aaron's teaching, the idea that you could look into this material, you could in fact get insights of relevance to law. The attraction of the group in the industrial organization workshop, the intellectual tradition represented by George and Milton, created the sense that if somehow you could get hold of this material and bring it back to law, there was an opportunity to have a style of law teaching other than the constitutional law style and other than the practice style, that would be a significant scholarly and law teaching vocation. That was very unclear to everybody at first. But by 1975 you could see that there were people in American law schools who could be characterized not as contracts teachers, or torts teachers, or regulation teachers, or antitrust teachers, but as having a general expertise in the application of economics to the legal system.

All of this had very limited impact on the students until very recently. Again, their pragmatic streak shows. When the courts began to pay some attention to this work, and it began to occur to them that you might actually cite this in a brief—they really didn't care whether it was right or wrong—that it would be respectable to cite some of these arguments, then they got interested.

During the early period Aaron was always teaching that the courts had it all wrong. None of the law students could imagine getting up before the bench and saying, "Your honor, there is this case and that case, but boy are you guys bonkers [laughter]. If you just follow Director's arguments I
will win my case.''' They couldn't imagine proceeding in that form, so it remained a matter of collateral interest to them. It has now reached the courts in a few cases, so it now occurs to them that maybe you can whip this out in a tight situation and distinguish the prior case by showing that the economics are different. Law student interest has increased substantially since 1975, but not because of the intellectual and scholarly agenda.

**Posner:** Ronald's contributions to law and economics have been considerable and fundamental. We haven't mentioned the fact that Ronald's articles on the marginal cost controversy in the 1940s and his article on the Federal Communications Commission were important parts of the critique of modern governmental regulation and have played a large role in the critical literature on that subject.73

The social cost article, as everybody knows—it's silly to dwell on it—is basic to the whole economic analysis of law. One of the things that isn't often addressed, perhaps, is that, in two sections of the article, Ronald discusses cases, English nuisance cases, famous English nuisance cases like *Sturges* and *Bridgman*, and then a number of American cases dealing with airplane overflights and the like.

Ronald suggested, although it was not the focus of his article, that judges had an instinctive grasp of the economic issues in these cases. I think he quoted some passages from Justice Bramwell, who was a nineteenth-century English judge who obviously had an intuitive understanding of economic principles. My interest in using economics to try to explain legal rules stems in significant part from that part of Ronald's article.

In addition, of course, Ronald has what to a lawyer is quite important, an unusually lucid and simple style of writing. The first time I came across Ronald's work was when I worked for the government in Washington on communications policy. I read a library copy which was full of apoplectic marginalia [laughter]. When I read it, having no knowledge of economics at all, it seemed to me to make perfectly good sense. The fact that it was very well and clearly written enabled him to communicate with me in a way that most economists could not.

I think Ronald and Aaron share a quality of being able to demonstrate the power of a simple economic model, and a simple economic model clearly described is something that lawyers find accessible.

**Stigler:** There was an enormous amount of criticism of the social cost article when it was published. Dozens of refutations were written, some of which were never printed. My favorite story in that regard, one that

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73 See notes 67 and 69 *supra*. 
Milton can verify, is that of Warren Nutter, who also had deep misgivings for a while about the Coase theorem.

He was scheduled to give a talk at Rochester at a workshop entitled something like, "The Fallacy of the Coase Theorem." But he made the mistake of taking a plane from Charlottesville and sitting next to Friedman and when he got to Rochester the paper was retitled "A New Proof of the Coase Theorem" [laughter].

Mann: Dick, would you elaborate a bit on the tort area?

Posner: Guido Calabresi published his first article on torts the same year, 1961, that Ronald's article on social cost was published. They have different citation dates, but they are simultaneous and independent.

Guido and Ronald were the first people, so far as I know, who ever used economics to discuss tort cases. There are some references to liability in Pigou, liability for tort damage, but I think it is only in retrospect that you would view that as economic analysis of the tort system. There is early legal writing of Holmes and others using utilitarian ideas to discuss the law. There is a famous article of about 1915 by Henry Terry in the Harvard Law Review on negligence in which he talks about costs and benefits, uses the words "utility" and so on. Again, it is only in retrospect that one would recognize those as economic discussion of torts.

Scott: What about the Hand decision?

Posner: Carroll Towing in 1947, yes, there is certainly a lot of implicit economics in the cases, and some of the nineteenth-century judges like Bramwell talk what in retrospect is an economic line. There was a recent article in the Journal of Law & Economics by Atiyah about Bramwell's nineteenth-century opinions and their economic content. I think 1961 is a convenient starting point for that field. There has been a lot of work since then. Bill Landes and I have written on the economics of torts, and Calabresi has continued to work. There's now a mathematical literature discussing these subjects from a rather formal standpoint.

Landes: The economics literature has gone off in two directions. One direction has been developing complicated models of liability and accidents in which you make assumptions about which parties have information and which parties don't have information, costs of obtaining information, and so on. This mathematical literature generally reaches

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75 Henry T. Terry, Negligence, 29 Harv. L. Rev. 40 (1915).
76 United States v. Carroll Towing Co., 159 F.2d 169 (2d Cir. 1947).
indeterminate results. There is no such thing as an efficient liability rule in that literature.

The other part of the literature, more what Dick and I have followed and, if you like, a Chicago tradition, is taking a very simple model of liability rules, assuming people are well informed and risk neutral, and seeing to what extent that model can be used to explain a lot of existing rules governing liability.

The first part I mentioned is not really interested in explaining liability rules. They are interested in the different impact of potential liability rules, but not interested in explaining the actual rules.

MooRE: Henry, can you talk about the property rights literature and Armen’s contribution to it?

MANNE: I met Armen at one of the Volker-supported summer seminars at Claremont in either 1958 or 1959. Armen had a new paper that was the beginning of what was later published under the title “The Economics of Property Rights.”

I was very much taken with the paper.

I realized that Armen was offering a behavioral approach to a great many issues of interest to lawyers. It had a kind of fit with what Coase was about to publish at the time. The focus of Armen’s work was much more on the behavior of actors in all contexts, market and nonmarket. I saw Armen’s approach as representing a comprehensive economic theory of law. The approach, particularly as it was elaborated and disseminated in that great textbook, Alchian and Allen, *University Economics*, was quite hospitable to law professors. We have long used that book and its successor editions in the Institute for Law Professors and indeed, the large number of law professors who have been introduced to economics came to it fundamentally with Alchian’s approach to property rights. I think that made the whole task enormously easier than it would have been otherwise.

ALCHIAN: I feel like a monkey who sat at the typewriter and typed out $E = MC^2$ or something like that and along came Einstein a little later on and interpreted it. I am constantly amazed at the idea that somehow, and it’s always nice to hear, I’ve played a role in establishing a new field called property rights. I have heard it from so many people that I’m beginning to believe it’s true although I know it’s not true.

One can’t help but see the whole issue in Adam Smith’s famous section on the university. Bill Meckling and I were arguing about the committee system of approving appointments at UCLA. He said, “That system’s entirely stupid,” and that’s pretty strong, and I was defending it and having a hard time of it. But I kept telling Bill, “It’s been around, it’s

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survived, and it's got some kind of function. Why does it survive?" And after our long and interminable discussions we concluded, rightly or wrongly, that it was the result of the kind of property rights structure in the university as contrasted with private, for-profit enterprise, which I think is correct. Whether or not it is is irrelevant at the moment.

In the course of that conversation the well-known Nobel Prize winner came in one day and said, "Property rights have no effect on people's behavior. That's just the institution, that's just the technology. It has no real effect on their culture or behavior." I was taken aback by that. I think the person changed his mind, but at least it gave me an idea at that time that maybe there is more in this whole area than I thought there was.

I went to look up the law to see what the law had to say about the definition of private property rights as distinct from public property rights, or communal property rights, or nonprofit organizations. There was no discussion in the law at all that I could find that was analytically of any value, that would tell me what the distinction was between these various kinds of rights. But I ran across that great book by Pollock and Maitland.79 There you could see very clearly, I thought, the idea that institutions of man have evolved over time through a competitive process of people trying to evade the law or a particular government. The way in which those rights, which he then called private property rights in land or a piece of it, developed, and what I thought was a response of the people, struck me as a very fascinating story.

In all this background about the people responsible for law and economics, I would put Pollock and Maitland in an important place in that tradition.

Roland McKean and I used to discuss what we meant by enforcement of the law, and we used to talk about ethics or etiquette as a part of the law. Why is it that if you don't behave properly I'll shun you or won't associate with you? We were trying to treat religion and etiquette as a very strong force in society and proposed to take a look at Emily Post's Book of Etiquette to see how much of that we could explain as economic principles being applied to our daily behavior. To look at the law as legislated or judicial law is too narrow. I like to look at the law as the way in which people's behavior is controlled, be it etiquette, or religion, or social mores.

The things I've written I think are important everybody ignores and the ones I think are not very important—the evolution one and this property

79 Frederick Pollock & Frederick Maitland, The History of English Law before the Time of Edward I (1895).
rights—it's never been published, by the way, that's why it's been so popular.

The evolution one seems so obvious. I was almost embarrassed at writing it down. Alfred Nichols said, "Send it to Chicago. There's a guy there named Friedman who'll like it." Friedman wrote back a very helpful letter saying it was very important. I said I guess it is. It seemed so obvious. I was teaching this undergraduate class in principles and we discussed marginal cost pricing. "How do you know they do it?" the students asked. And I said, "They survive, and if they don't survive, they don't do it. It's the simplest theory of evolution." So I wrote that down and out came this long paper which said the same thing, with a few simple applications.

I guess it's surprising to people, just as today I'm taken aback at the resistance to the sociobiological approach to behavior. The idea that our cultural behavior is genetically evolving is anathema, for instance, to some distinguished medical and physical scientists at UCLA.

BECKER: Armie is being too modest. I first met Armie in the summer of 1957 out at Rand, on my way from Chicago, where I had just finished my studies, to teach at Columbia. Armie, I thought, carried an attempt at a rational interpretation of a lot of behavior further even than was done at Chicago.

I'll give a couple of examples. We were discussing crime one day. I had picked up, I think from Frank Knight, the notion that people obey the law essentially because of unthinking obedience. And Armie says, "No sir-ree, it's just the deterrence. If they are caught they'll be punished." And we argued the whole summer. And by the end of the summer I was convinced, and I am sure it had something ultimately to do with my writing the article on crime and punishment.\(^{80}\) The same thing on profit and inflation. Armie was stressing that this was an equilibrium position and so on, that this was a market equilibrium that was occurring. On many other issues, possibly because he hadn't been at Chicago, Armie had independently gone considerably further than the atmosphere at Chicago as of that time in giving a rational interpretation of a number of phenomena in different parts of market and nonmarket life.

ALCHIAN: Before you press that point, I would like to emphasize the influence of the people at Rand: Andy Marshall, Russ Nichols, Reuben Kessel, and later Meckling. They played a great role in the way I viewed the world.

MANNE: I finished at Chicago familiar with economics but not feeling educated. I tend to date whatever sense of understanding I have to a meeting with Armen. I told him that I'd been puzzling about problems of the large corporation. As I heard Armen introduce me to this notion of economic property rights, I began to see that the corporation had a series of these different interests involved. He also referred me to Anthony Down's *Economic Theory of Democracy*\(^{81}\) which, as you recall, had a theory of a market for votes. I realized that what he was talking about was exactly what happens with corporations. I was off and running.

The literature has now developed to the point where we can say to Adolf Berle, you asked a lot of very important questions, and now forty years later, here are the answers. There are still bits and pieces to understand.

KITCH: As I listen, all along, at every point in time, the people in the field seem to think that the questions have been answered. But there have always been one or two people, viewed as eccentrics, who keep asking questions that later turn out to be important. I wonder whether thirty years from now it might not appear that there are some questions that we overlooked?

* * *

AFTERWORD

There are three different stories that can be imposed on the events just recounted. The first story, one that most of the participants would like to believe is true and which I think most of them believe is true—although they would probably deny it—is a story of the power of the human mind to divine the truth and to persuade other human minds to the same vision through the techniques of patient inquiry and careful research.

The problem with that story is that the basic truths that were being taught at Chicago—as Aaron quite rightly points out—were not really new truths. They were old truths. The principal effect of this work has been to return economics to its older traditions. Why, if the matter is simply one of correct analysis, were insights once grasped lost, and truths once understood forgotten?

The second story is one of the demand for ideas. Intellectuals produce ideas which are received or rejected based on social conditions beyond their control. The basic views of the world of a Coase, a Director, or a Friedman never really changed. The world changed and, for some reason

we do not understand, became receptive. Perhaps people get bored and reject first one orthodoxy and then another. This is just a moment in the sun for neoclassic price theory, which will doubtless pass.

Or perhaps social conditions create their own demand for theories to explain them. It was obvious to any fool during the depression that the world didn’t work, so it was necessary to explain why. Conversely, when during the fifties and sixties economic affluence seemed to flow unstop- pably, it was necessary to have invisible hand theories that would explain why. The intellectuals simply supply the system of thought convenient to explain today’s mysteries.

The third story, one that would be favored by Marxist writers, is a conspiracy explanation. At the close of World War II, capitalist legal systems were in desperate straits. Hitler had come to power under the slogans of the right, and the universal revulsion to his infamy would inevitably lead to an ascendance of the left. The capitalists—here represented by Luhnow and his Volker Fund—knowing that their position was threatened, funded a countermovement to relegate their institutions. Thus the formation of the Mont Pelerin Society, the omnipresent hand of Hayek, and the conjunction of intellectual forces at the University of Chicago. This is a story of ideas in the service of power.

The reader will have to choose which story best captures these events.

There are a number of aspects to the story that the discussion suggests but does not directly address. One is the pain and struggle that accompanied these achievements. In particular, Director, Coase, and Bowman spent their professional lives outside the mainstreams of their own professions. Director’s failure to publish, although it has proven unimportant in the end, could not have but been a source of personal discomfort for many years. Coase has been a virtual refugee, leaving the London School of Economics in the post–World War II move to socialism in England, to find homes first at the University of Buffalo, then at Virginia, and finally at Chicago. He does not take pleasure from the fact that he ended up practicing his profession as he feels it should be practiced outside an economics department. Bowman, who saved the world from Director’s failure by writing up Director’s views on antitrust, and in the process elaborating and refining them, spent the last part of his career in a law school hostile to his views. One hopes that the three of them can now take quiet pleasure in what they have in fact done.82

82 This discussion, addressed to the history of ideas, also glides over the substantial administrative effort required to provide the supportive facilities and environment at Chicago. Although lunch is only mentioned in the discussion as a place for conversation, scholars, too, must eat. Edward H. Levi and Phil C. Neal, the deans of the law school at Chicago during this period, managed to provide continuing support to the group, as did their counterparts in the Graduate School of Business and the Department of Economics. At a
At proceedings held in conjunction with the conference, the assembled participants conferred upon Director and Coase prizes recognizing their role as founders of the field of law and economics.

A striking aspect of the whole discussion is the repeated emphasis on the importance of oral communication. In this age of information processing, data banks, low-cost printing, and frenzied academic publishing, one might have thought that oral communication was obsolescent. Yet over and over again the discussion emphasizes that what was really important was the discussion, the face-to-face communication about the problem being examined. One can read thousands of books, and yet they lie lifeless on the page without the power of critical imagination. Are we forgetting the importance of oral, face-to-face communication in modern education and research? Are the social sciences different from other fields in this respect? Is what is really going on here that the participants in a discussion are serving as sources of data gathered from their own social experience, substitutes for the experimental data generally unavailable to the social scientist?

There are larger ironies that should interest the student of intellectual history. Innovation here comes from the fringe, not the mainstream. Simons, Director, and Coase were all professors of economics who did not find a comfortable place in their own fields. Chicago, not Harvard or Yale, was the leading innovator.

Note, too, the extent to which actions have unintended consequences. Hutchins could not have intended that among his numerous innovations at the University of Chicago, one of the most durable would be an introduction of the perspectives of economics into legal scholarship. Nor could William O. Douglas have intended that his 1929 call for a functional approach to the scholarship of business organizations would lead to the modern literature on the theory of the firm. Ideas, in the end, seem to be very unruly.

The discussion opened by noting that legal realism ended as some of the legal realists went into the New Deal. Does a similar fate await law and economics? Within months of the conference, Bork and Posner were no longer scholars but judges. Does the political success of an intellectual movement addressing questions of policy spell its demise? I doubt it. Academic lawyers still have the basic desire to understand and teach more about the law than simply repeating what judges and legislatures say. From economics they have gained some tools. They are not likely to throw them away.

time when the significance, if any, of all this work was in doubt, it was no easier to convince the University's constituencies of the value of long-term support for basic research than it is now.
### APPENDIX A

#### PARTICIPANTS

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
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<td>Wesley J. Liebeler</td>
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<td>Mahoney, Hadlow &amp; Adams</td>
<td>University of California, Los Angeles</td>
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<td>Armen A. Alchian</td>
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<td>Ronald H. Coase</td>
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<td>Aaron Director</td>
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