biographer of someone who, like Myrdal, wrote prose that lay people could read and whose thinking was to a certain extent idiosyncratic. However, one has only to look at Merhling's (2005) intellectual biography of Fischer Black, in which Modigliani plays one of the leading roles, to see what can be done. Davidson, in contrast, faced the problem of writing about a figure about whom outstanding biographies had already been written. However, in constructing Keynes in the image of modern Post Keynesian economics, he turns his back on the historical Keynes and, in so doing, takes away the context that would also explain the role of Modigliani as one of the young enthusiasts for Keynesian economics.

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James R. Hackney, Jr., *Under Cover of Science: American Legal-Economic Theory and the Quest for Objectivity* (Durham, NC: Duke University Press, 2007), pp. xx, 239, $64.10 (hbk), $22.95 (pbk). ISBN-13: 978–0822339984.

The central thesis of this book appears to be that in the debate over the foundations of the economic analysis of law in the late 1970s and 1980s, the Critical Legal Studies (CLS or CRITs) scholars got it right all along as against Richard Posner and consorts: law and economics acquired undue prestige in the American legal academia by posing as a scientific theory even though it abstracts from distributional concerns, which ought, on the CLS view, to be part and parcel of any theory of law worth its salt.[1] The author fears that the prestige of "law and neoclassical economics," as he terms it (p. 164), is such that it silences all other forms of theorizing in American legal scholarship to the detriment of openness of debate (p. 173). He should like to combat this form of excessive "scientism" and see law and neoclassical economics reduced to middle-level theorizing, leaving room for other perspectives to get

[1]See in particular "Symposium on Efficiency as a Legal Concern," *Hofstra Law Review* 8 (1980): 485–770; "A Response to the Efficiency Symposium," *Hofstra Law Review* 8 (1980): 811–972.

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a hearing. This thesis has been developed in earlier papers by the author ranging from 1995 to 2003.[2]

To demonstrate his thesis, the author takes us on a grand tour of history. In the prologue he sets out to show the role of theory in American law, swaying between formalism (or legalism, as Posner would have it),[3] on one hand, and pragmatism, which judges legal arguments by their consequences, on the other. To buttress either approach, the advocates have been looking for the prestige of science and hence the first chapter takes us on a quick overview of the history of science in an effort to trace, for each epoch, what the dominant mode of scientific argumentation has been: from Aristotle to Newton to Darwin and finally to Einstein. One must then, in a second chapter, look at how these broad currents came to influence legal thinking. The third chapter shows how under the distant influence of the Vienna Circle, and the positivist and analytical philosophies it called forth, law returned to a form of formalism for which, in the author's view, "law and neoclassical economics" supplied the appropriate tools. The chapter looks at how neoclassical economics sought to give itself a scientific character by these standards and how this attempt carried over into the legal arena. Chapter four, significantly called "The Dissolution of American Legal-Economic Theory," discusses how the concept of science and the certainty it was for a long time thought to provide are now being questioned, as they are within economics proper and by implication within the legal arena and in particular in the debates of the late 1970s and 1980s, mentioned earlier. In the author's view, these debates have convincingly demonstrated that "law and distribution economics" (p. 132) has an essential role to play. He enlists for this view scholars like Guido Calabresi, Ronald Dworkin, William Coleman, Frank Michelman, Edwin Baker, and Harry Markowitz, beside well-known CRITs like Morton Horwitz, Duncan Kennedy, and David Trubek (pp. 133, 134). "Law and distribution economics" essentially questions the agnosticism neoclassical economics and its spin-off in law profess about distributional questions (p. 136), focusing as they do on efficiency concerns. Moreover, "law and distribution economics" contends that even on its own terms "law and neoclassical economics" fails often to provide the determinate efficiency conclusions it promises, in particular because these depend on the initial distribution of wealth. The "law and neoclassical economics" having thus been cut down to size, the author allows himself in the Epilogue to speculate about the open debate on legal theory we may now look forward to.

What to make of the book? The extended tour through the history of science makes for interesting reading, as does the initial explanation that American legal philosophy, because of its revolutionary origins, is given to questioning dogmatic statements and taking a pragmatic approach to what law should be. But the crux is in

[2]James R. Hackney, Jr, "The Intellectual Origins of American Strict Products Liability: A Case Study in American Pragmatic Instrumentalism," *American Journal of Legal History* 39 (1995): 443–509; "Law and Neoclassical Economics: Science, Politics, and the Reconfiguration of American Tort Law Theory," *Law and History Review* 15 (1997): 275–322; "Law and Neoclassical Economics: A Reply to Commentaries," *Law and History Review* 16 (1997): 163–171; "The 'End' of: Science, Philosophy, and Legal Theory," *University of Miami Law Review* 57 (2003): 629–648; "Law and Neoclassical Economics Theory: A Critical History of the Distribution/Efficiency Debate," *Journal of Socio-Economics* 32 (2003): 361–390; "The 'End' of: Science, Philosophy, and Legal Theory," *University of Miami Law Review* 57 (2003): 629–648.

[3]Richard A. Posner, *How Judges Think* (Cambridge: Harvard University Press, 2008), 7.

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the last part of the book and one must wonder whether the continued success of law-and-economics in the United States is really based on questionable assumptions that need to be shown for what they are. And has the movement really become so dominant as to silence all dissonant voices? It is true that law-and-economics has nowhere outside of the United States had the same success. Indeed, in France it has been largely dismissed or at best ignored.[4] But that may say more about the openmindedness and innovative spirit of American academia than tell against law-and-economics. The enormous literature the law-and-economics movement continues to spawn in North America as well as in Northern Europe, one generation after the founders, far outstrips what is being published on the basis of critical legal studies. Have we all been indoctrinated and do we keep reciting the mantra? Surely the rapidly increasing number of empirical studies in law-and-economics must tell against that view.

One may wonder how many degrees of freedom we have in integrating distributional concerns into our economic calculus. There are some telling experiments where we got it dramatically wrong. One is the universal accident compensation scheme New Zealand introduced in 1974, only to be clawed back to differentiated premia in the early 1990s, after experiencing six percent yearly increases in claims over that period. Distributional concerns do not magically make moral hazard go away.[5] For another example, the Supreme Court of Canada has recently ruled that companies should have a broader objective than maximizing shareholder wealth; they should take stakeholders' concerns into account.[6] Distributional economics would, I presume, support that ruling; efficiency concerns would predict that it will tend to increase the cost of credit for companies, hence reduce investment and employment. The results observable in the coming years will tell us whether market actors align themselves with what "law and distribution economics" advocates.

The debate this book relates about distributional concerns appears dated and out of touch with what seem to be the current concerns within the law-and-economics movement: what place history, institutions and behavioral economics are to occupy in our economic understanding of law and how to design sophisticated empirical studies. We may yet come to realize that ignoring distributional concerns has introduced a congenital flaw in our research paradigm. But no indices currently point that way. Law-and-economics may not provide an overarching theory of law, as the book reminds us, but as "middle-level theorizing" it does provide an awfully powerful machinery for convincingly spinning out the consequences of legal rules.

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[4] I hope to contribute my bit to opening the debate there with Ejan Mackaay and Stéphane Rousseau, *Analyse économique du droit* (Paris/Montréal: Dalloz-Sirey/Éditions Thémis, 2008), 2nd ed.

[5] Patricia M. Danzon, "Medical Malpractice," in *The New Palgrave Dictionary of Economics and the Law*, Vol. 2, ed. Peter Newman (London: Macmillan, 1998), pp. 624–635, 632.

[6] *Peoples Department Stores Inc. (Trustee of) v. Wise* [2004] 3 S.C.R. 461, 2004 SCC 68 (CanLII).

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