**The Eventual Decline of Empirical Law and Economics**

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*Abstract*

*This Article suggests the necessity of a co-evolutionary process among empirical and theoretical advances in law and economics. Empirical work alone is suggestive, but should not be taken too seriously. The weaknesses in empirical work are a kind of virus that begins with over-statements and misapprehensions, and then spreads as more scholars copy the mistakes and engage in empirial work as a means of entry into the field. Empiricism will become suspect as its current assumptions are questioned, and as replication failures reveal its weaknesses. Empirical work looks very different when underlying distributions are not easily probed with regressions but are understood as reflecting power-laws, or as simply random. Once inconvenient distributions are acknowledged, the key question is why observations might be distributed in this fashion. This is likely to be a task for theorists as law and economics enters its next phase.*

*The focus here is on three weaknesses of empirical work. First, much of the empirical work in law and economics is driven by models that rely on error minimization techniques, and these techniques are unreliable when errors are surprisingly and unevenly distributed (that is, when they suffer from heteroscedasticity). Second, it is likely that when empiricists connect data with a model, the process is flawed because there might be a hidden transition to a second distribution. Discovering multiple distributions is likely to require theoretical work. These and other problems are exacerbated by the likelihood that conclusions are based on the tail end of data sets, inasmuch as scholarly journals only bring to light statistically significant results. Finally, empirical work in law and economics suffers from the absence of sizeable data sets. Without such sets it is difficult to test conclusions and to escape the omni-present challenge of omitted variables. Reversal paradoxes are another serious problem, and especially so in the absence of large data sets.*

 *The larger and more optimistic claim is that data and theory can and must work together. Empirical work has come to play a critical role in law and economics, and its methods have improved over time. It has become apparent that data can suggest theories, and theories can be tested, to a degree, with data. But some theoretical insights are so convincing that data testing, though comforting, may be unnecessary – and testing may, in any event, be tainted by the spread of the theory. It is likely that the surge of empirical work in law and economics will be pushed back unless there is renewed attention to theory.*