

FORMATS FOR LAW AND ECONOMICS IN LEGAL SCHOLARSHIP: VIEWS AND WISHES FROM EUROPE

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This Article discusses the role of law and economics in Europe's law schools, paying attention mainly to local law and economics efforts, as opposed to internationally visible research output and education. The goal is to provide a more complete picture of the importance of law and economics in European law schools, thus allowing for a more robust analysis of the challenges to a broader adoption of law and economics among European law faculties. This Article begins with an overview of law and economics in Europe at present. It proceeds to analyze incentives that currently exist—or could be created—which further the adoption of law and economics among law faculties and orient the research output to a national audience. The Article then examines communication issues associated with local law and economics efforts and offers suggestions regarding how to successfully overcome challenges raised by those issues which have an impact on the scope of study and use of law and economics in law schools and legal communities. The Article also includes meaningful insights and practical feedback from professionals in the field. Ultimately, the Article concludes that, in Europe, the practice of law and economics by law faculties varies greatly between countries, that Europe's internationally visible law and economics outputs do not give

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the full measure of its total law and economics production, and that, while there are several barriers to broader adoption of law and economics among law faculties in Europe, those barriers are not insurmountable.

When cosmologists tried to estimate the total amount of matter in the universe, they used two different methods. The first method was to add up the estimated matter of every visible star and galaxy. The second method included calculations derived from the movement of stars, which are influenced by the matter around them. Surprisingly, the second method led to more than [ten] times more matter than the first method. Therefore physicists now believe that there is a lot of “dark matter” in the universe. With regard to law and economics writings there is a lot of dark matter in many countries—including Germany—too. These writings are almost invisible to the international audience. The authors write in their national language and publish in national law journals.

Hans-Bernd Schäfer¹

I. INTRODUCTION

The university with which I am affiliated, the University of Ghent in Belgium, is renowned as a centre for law and economics (L&E) in Europe. Its international visibility in the field is due to the team that Boudewijn Bouckaert brought together at our law faculty in collaboration with Gerrit De Geest and, more recently, Ben Depoorter. An important achievement of Bouckaert and his team is undoubtedly the European Master in Law and Economics (EMLE) programme. In 1990, the law faculty at Ghent was one of only two law faculties to set up this European postgraduate programme.² It soon became a beacon for L&E education in Europe.³ Although now the key figures of the research group no longer work full time at our law faculty, they continue to keep the faculty on the international map as far as L&E is concerned.

Besides this team, the law faculty at Ghent has just one other research group with an L&E output: the Centre for Environmental and

1. Hans-Bernd Schäfer, *Law and Economics in Germany*, EUR. ASS'N L. & ECON. (May 30, 2009), <http://ealeorg.blogspot.com/2009/05/third-in-series-on-development-of-law.html>.

2. Rudi W. Holzhauser & Rob Teijl, *Law and Economics in the Netherlands*, in 1 ENCYCLOPEDIA OF LAW AND ECONOMICS: THE HISTORY AND METHODOLOGY OF LAW AND ECONOMICS 274, 280 (Boudewijn Bouckaert & Gerrit De Geest eds., 2000) [hereinafter ENCYCLOPEDIA OF LAW AND ECONOMICS].

3. Currently, the EMLE consortium comprises the universities of Aix-en Provence, Bologna, Ghent, Haifa, Hamburg, Mumbai, Rotterdam, Vienna, and Warsaw. *Partner Universities*, EUR. MASTER L. & ECON., http://www.emle.org/Subpages_rubric/index/php?rubric=Universities (last visited Aug. 18, 2011). The program has been ranked among the top five programs in the European Union Erasmus Mundus competition, a competition among more than 150 Erasmus Programs. See Nuno Garoupa & Thomas S. Ulen, *The Market for Legal Innovation: Law and Economics in Europe and the United States*, 59 ALA. L. REV. 1555, 1568 n.50 (2008); Thomas Eger, *The European Master in Law and Economics (EMLE): Recent Developments and Future Prospects*, EUR. ASS'N L. & ECON. (June 29, 2009), http://ealeorg.blogspot.com/2009_06_01_archive.html.

Energy Law, to which I belong. We incorporated L&E into our environmental law work. In the past fifteen years—since 1996—we have worked together with environmental economists from the Catholic University of Leuven and, more recently, Brussels University College. We work together on research projects that are complementary to our purely legal work. We started by studying the social costs of the instruments used for pursuing an environmental policy. The focus of our research, however, soon shifted to enforcement issues. Our research output comes in three flows: purely legal, purely economic, and L&E work. Thus, we publish L&E output on an occasional, but systematic, basis. In this way, the Centre for Environmental and Energy Law falls within a format that also exists in U.S. law schools: a format in which legal scholars who generally publish strictly legal papers occasionally also write a piece on L&E.⁴ But we publish this L&E work largely in Dutch and in local law journals or in Dutch-language doctrinal books. Thus, we offer a Belgian example of Schäfer's "dark matter."⁵ Our publications, which are for the most part unknown abroad, contain outcomes that, despite the fact that they are rooted in Belgian law, could also be of interest to the international forum. These Dutch-language publications cover, inter alia, research into the social costs of legally formalized environmental policy instruments;⁶ inspection strategies, in particular the potential of notices of violation and targeting;⁷ and the factors determining the punishment policies of courts in environmental crime cases.⁸

4. Garoupa & Ulen, *supra* note 3, at 1573–74 (“It is our sense that the majority of the Illinois faculty understands and makes law-and-economics arguments in their written work.”); Oren Gazal-Ayal, *Economic Analysis of Law in North America, Europe and Israel*, 3 REV. L. & ECON. 485, 505 (2007) (“[I]n North America, many law professors who are not L&E scholars and who usually write regular legal papers for law reviews do from time to time write an L&E paper.”). For L&E working formats in legal scholarship, with a discussion of the two culture problems they bring along, see Alan Schwartz, *Two Culture Problems in Law and Economics*, 2011 U. ILL. L. REV. 1531.

5. See Schäfer, *supra* note 1.

6. See Carole M. Billiet & Sandra Rousseau, *Rechtseconomische Analyse van Milieubeleidsinstrumenten [A Law and Economics Analysis of Environmental Policy Instruments]*, in DE HANDHAVING VAN HET MILIEURECHT [THE ENFORCEMENT OF ENVIRONMENTAL LAW] 185 (J. Van den Berghe ed., 2002). We took into account the cost of the regulatory, implementation, and enforcement phases for government, industry, and third-party stakeholders. We demonstrated that, under certain circumstances, environmental taxes are the most costly instrument for emission reduction, even more so than emission and technology standards. See *id.*

7. See C.M. Billiet & S. Rousseau, *Zachte Rechtshandhaving in het Bestuurlijke Handhavingsspoor: de Inspectiebeslissing en het Voortraject van Bestuurlijke Sancties. Een Rechtseconomische Analyse [Soft Law Enforcement in the Administrative Enforcement Track: The Inspection Decision and the Preliminaries to Administrative Sanctions. A Law and Economics Analysis]*, TIJDSCHRIFT VOOR MILIEURECHT [J. ENV'T L.] 2–33 (2005). We found inspiration in an article by Winston Harrington and collected data from around 1800 inspection visits from forty companies between 1991 and 2003. See Winston Harrington, *Enforcement Leverage When Penalties Are Restricted*, 37 J. PUB. ECON. 29 (1988). The study led to fresh insights into an effective legal formalization of the competence to write out notices of violation and the preconditions for its effective use.

8. E.g., C.M. Billiet et al., *Milieucriminaliteit in het Beleid van de Strafrechter: Bestrafen Tussen Haus en Brundtland [Environmental Crime in the Criminal Judge's Policy: Punishing Between Haus and Brundtland]*, 22 RECHTSKUNDIG WEEKBLAD [WKLY. LEGAL J.] 898 (2011). We used a regression analysis to study 1156 mostly unpublished first-instance and appeal judgments, the environmental

When Schäfer says that many countries have a local L&E literature that is “almost invisible” to the international community,⁹ he actually means a local literature that makes active use of economic analytic tools on legal issues. Schäfer points out that this strand of literature comes from legal scholars who “gain little reputation inside their own profession [] when they publish in English” and “want to be read by peers.”¹⁰ As far as I can judge, his observation is correct, so far as Europe is concerned.¹¹ There exists in a majority of European countries a more or less extensive local L&E literature that amounts to more than a sporadic use of a consequential argument or a reference to the economic impact of a legal rule.¹² It is essentially the work of legal scholars. The authors publish in law journals and books in their own languages.¹³ What interests and motivates them is the application of L&E methodology to their own legal systems and participation in the legal discourse in their own legal communities.¹⁴ The fact that the peers who read them and with whom they enter into debate are mostly legal scholars who do not have L&E in their tool kits is not really a problem. To understand the importance of L&E for legal scholarship in Europe, it therefore is not sufficient to focus only on the research output that is internationally visible and accessible.¹⁵

I have been asked to discuss the role of L&E in Europe’s law schools. It seemed like a good idea to draw attention and lend a voice to the local L&E work that exists in Europe. By its very nature it is little known internationally. A picture of the importance of L&E in Europe’s law schools and legal science, where this local work has a place, is more complete than a picture in which it is lacking. The more complete picture allows for a more variegated analysis of the difficulties and chances L&E has in securing a proper place in our legal communities.

This Article falls into three parts. In Part II, I give a quick sketch of L&E research and education in Europe today. Focus is on the law schools, as I attempt to document the layer of internationally visible activity and the layer of hidden local activity. In Part III, I analyze incen-

crime case law for the years 2003–2007 within the resort of one of the five Belgian courts of appeal. The study uses a database that, until recently, was unique for Europe, and most probably still is. *See infra* note 91.

9. Schäfer, *supra* note 1 (“In Germany there exist now more than a dozen of habilitation theses, dozens of PhD theses and hundreds of articles on law making extensive and diligent use of economics, all in German language. They describe the consequences of legal norms, interpret the law with the help of economic tools, compare alternative rules and discuss regulatory competition.”).

10. *Id.*

11. While researching for this Article, I learned that South Korea and Japan each have their own L&E associations which organize annual conferences with papers that are, it seems to me, written exclusively in Korean and Japanese.

12. *See* Gazal-Ayal, *supra* note 4, at 490.

13. Note the implication—those publication channels are open to their work.

14. Would L&E have met with success at U.S. law schools if L&E research had resulted in the loss of ties with the local law and legal scholarship debate?

15. *See* Schäfer, *supra* note 1; *see also* Gazal-Ayal, *supra* note 4, at 490 (considering internationally visible research output to be representative of scholarship in the field).

tives for local L&E work, in particular the decision to publish locally, and explain why, in my opinion, local L&E work grows in significance over the medium long term. In Part IV, I examine communication issues associated with local work and make suggestions on how to handle them. I wind up with a conclusion and offer some figures in an Appendix.

One premise of this Article is that L&E essentially belongs to law faculties rather than to economics faculties.¹⁶ The perspective adopted will therefore, to a large extent, be that of a legal scholar, although the economist is never far away: perhaps even more so than in the United States, where the undergraduate and postgraduate systems offer systematic opportunities for interdisciplinarity study within law schools, collaboration between the two disciplines in Europe also constitutes a fundamental factor in the development of the economic analysis of law.

Europe encompasses the European Union, Norway, and Switzerland.¹⁷ To avoid any misunderstandings, I take L&E to mean the use of economic concepts “to explain and clarify legal issues, not only with respect to narrowly defined ‘economic’ fields, such as competition and economic law, but also to legal fields that concern a wide variety of non-market activities, from liability issues to family matters and crime,” and thus “a central methodology for both positive and normative legal analysis.”¹⁸

II. L&E IN EUROPE TODAY

The reception and dissemination of L&E in Europe is fairly extensively documented in Bouckaert and De Geest’s *Encyclopaedia of Law and Economics*.¹⁹ Data are generally only available up to 1997, but are still very instructive. They cover Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Norway, Portugal, Spain, and Sweden.²⁰ For each country, an outline of the state of research and education, information about the difficulties that are encountered, and a bibliography with local publications can be found there.

16. This clarification flows from the European context, in which L&E has been far more welcomed by the faculties of economics than by the law faculties. Thus, for instance, the economists on my multidisciplinary research team have a problem with this position. In their view, L&E belongs just as much in the economics faculties as in the law faculties, at least as far as research is concerned. As for the educational aspect, their protest remains open to argument, as evidenced by informal discussions of this Article at the IWT/SBO Seminar held at the University of Ghent on October 22, 2010.

17. The European Union presently has twenty-seven member states: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. *Member States*, EUROPA, http://europa.eu/about-eu/member-countries/index_en.htm (last visited Aug. 18, 2011).

18. *Mission Statement*, EUR. ASS’N L. & ECON., <http://www.eale.org/> (last visited Aug. 18, 2011).

19. See ENCYCLOPEDIA OF LAW AND ECONOMICS, *supra* note 2.

20. See *id.* The Encyclopedia of Law and Economics lacks a contribution to the United Kingdom. For a flavor of the pioneering years of Europe’s L&E, see Göran Skogh, *Economics of Crime in the Past and the Birth of EALE*, Address at the EALE 25th Anniversary Dinner (Sept. 17, 2009), available at <http://ealeorg.blogspot.com/2010/09/skoghs-dinner-speech-and-memoirs.html>.

Ten years later, Garoupa and Ulen and Gazal-Ayal provide further information, with data generally available up to 2005. Where Gazal-Ayal's information concerns solely the internationally visible L&E research,²¹ Garoupa and Ulen offer a far wider panorama, albeit with special attention to the profile of L&E scholars at law faculties.²² An observation that emerges very clearly in these publications is that L&E "barely exists" in European law schools, whereas it is "vibrant, widespread, and dominant in North American law schools."²³ The search for explanations for the slow acceptance of L&E at European law schools has been the subject of much debate. In this respect I refer to the literature;²⁴ I cannot enter into this discussion within the scope of this Article, as much I would like to.

Whatever the obstacles were, and still are, it cannot be disputed that year by year L&E is becoming more mainstream in Europe. If one pays attention, even perfunctorily, one will easily pick up signals of this trend. In early July 2010, the First Annual Conference of the Spanish Association of Law and Economics took place in Madrid.²⁵ As of academic year 2010–2011, the University of Warsaw is the first of the former Eastern Bloc universities to join the Erasmus Master's Programme in Law and Economics.²⁶ Closer to home, I discovered that the Catholic University of Louvain,²⁷ as opposed to a few years ago,²⁸ has now included an L&E subject, "Special Topics in Law and Economics," in the master's years of the standard curriculum in law.

21. See Gazal-Ayal, *supra* note 4.

22. See Garoupa & Ulen, *supra* note 3.

23. *Id.* at 1568. The generalization of the success of L&E to "North American law schools" needs some nuance: "L&E has always been an elite activity, like playing polo. Proceeding down the ranking of law schools, L&E scholarship diminishes, like ownership of polo ponies diminishes going down the income scale. This decline is apparent even within the top twenty-five law schools." Robert Cooter, *Maturing into Normal Science: The Effect of Empirical Legal Studies on Law and Economics*, 2011 U. ILL. L. REV. 1475. The U.S. legal academy also keeps counting voices that strongly question or downplay the value and impact of L&E in legal scholarship. See, e.g., Anita Bernstein, *Whatever Happened to Law and Economics?*, 64 MD. L. REV. 303 (2005). The point Garoupa and Ulen are making, however, remains basically correct: L&E did gain an important place in the (better) U.S. law schools but still has a very modest place in Europe's law schools and legal scholarship.

24. Garoupa and Ulen offer an overview and discussion of all the different lines of thought. Garoupa & Ulen, *supra* note 3, at 1578–619. They believe that the main cause for the difference in openness to legal innovation between the European and U.S. law schools lies in the differences in "degree of competitiveness in legal education specifically and in higher education generally." *Id.* at 1633. See also Kenneth G. Dau-Schmidt & Carmen L. Brun, *Lost in Translation: The Economic Analysis of Law in the United States and Europe*, 44 COLUM. J. TRANSNAT'L L. 602 (2006); Gazal-Ayal, *supra* note 4; Oren Gazal-Ayal, *Economic Analysis of "Law and Economics,"* 35 CAP. U. L. REV. 787 (2007); Kristoffel Grechenig & Martin Gelter, *The Transatlantic Divergence in Legal Thought: American Law and Economics vs. German Doctrinalism*, 31 HASTINGS INT'L & COMP. L. REV. 295 (2008); Richard A. Posner, *The Future of the Law and Economics Movement in Europe*, 17 INT'L REV. L. & ECON. 3 (1997).

25. *Conferences & Workshops*, EUR. ASS'N L. & ECON., <http://law.haifa.ac.il/eale/site/confwork.htm> (last visited Aug. 18 2011).

26. Eger, *supra* note 3.

27. This university is located in the French-speaking Walloon Region of Belgium, while the Catholic University of Leuven is located in the Dutch-speaking Flemish Region.

28. Cf. Garoupa & Ulen, *supra* note 3, at 1577 n.110.

Here follows a brief outline of the current state of affairs. In keeping with the perspective of this Article, I have looked primarily for information about L&E at European law schools. First, I focus on the internationally visible research output. Next, I attempt to find out how far L&E education at European law schools has progressed. I end with a search for information about the status of local L&E work.

A. *Who Is Engaged in Internationally Visible L&E Research in Europe?*

The sample survey I carried out in order to form a picture of current internationally visible European L&E research covers authors who have written a paper that was accepted for presentation at the American Law and Economics Association (ALEA) and European Association of Law and Economics (EALE) annual conferences in 2008, 2009, and 2010. This sample was chosen partly in light of the research findings of Gazal-Ayal, who pointed out that, for legal scholars, the threshold for attending those annual conference was significantly lower than the threshold for publishing in the leading L&E journals.²⁹ I investigated in which countries the authors were employed at the time of their papers and whether they were employed at a law faculty, an economics faculty, or another faculty. For the European L&E scholars attached to law schools, I also investigated the extent to which they were qualified as legal scholars or as economists. Since my sample survey, five years later, runs along fairly similar lines to those of Gazal-Ayal, which covered the years 2003, 2004, and 2005, it further allows me to establish, to some extent, whether the internationally visible research in Europe, in particular at the European law schools, shows any salient trends.³⁰

What do we learn from the sample survey?

1. When we examine which European countries supply conference attendees,³¹ we note the absence of a number of countries (Table 1). Several countries that formerly belonged to the Soviet Union or Yugoslavia are lacking: Bulgaria, Estonia, Latvia, Lithuania, Romania, Slova-

29. Gazal-Ayal, *supra* note 4, at 489–94. See *infra* app. tbl.A. The selection of L&E journals was taken from Wikipedia, and it includes: the *American Law and Economics Review*; *Erasmus Law and Economics Review*; *European Journal of Law and Economics*; *International Review of Law and Economics*; *Journal of Law, Economics and Organization*; *Journal of Law and Economics*; *Journal of Legal Studies*; *Journal of Law, Economics and Policy*; *Review of Law and Economics*; and *Supreme Court Economic Review*.

30. See *infra* app. tbl.A. The ability to compare both data sets is limited by the fact that Gazal-Ayal's data are based not on the current affiliation, but on the nationality of L&E scholars. See Gazal-Ayal, *supra* note 4, at 490 (discussing data stratifications).

31. Note that the study measures the participation level of L&E scholars. Each (co)authorship of a paper is counted. Where one author had two or more papers accepted for presentation at a conference, each of those papers has been included in the calculations. In this regard, I deliberately choose to adopt the working method followed by Gazal-Ayal. See Gazal-Ayal, *supra* note 4, at 490. Authors working simultaneously for universities in two different countries were counted for each country.

kia, and Slovenia. A few smaller countries in southern Europe are missing, too: Cyprus and Malta. Particularly surprising is the absence of Ireland, given that there exists no language barrier.³²

2. With the Czech Republic, Hungary, and Poland, however, the former Eastern Bloc countries did start to participate in the international L&E discourse (Table 1).

3. Attendee numbers are not comparable with the numbers recorded by Gazal-Ayal for 2003, 2004, and 2005 in a straightforward way, but it does seem that international L&E research is not evolving positively in all European countries. Countries where this kind of research appears to be stagnating are Denmark, Finland, Greece, and Portugal.³³ In some countries—notably Germany, Italy, and Spain—research seems to be growing positively.³⁴

32. See *infra* app. tbl.A. Scholars from this country are also absent in Gazal-Ayal's study. See generally Gazal-Ayal, *supra* note 4. It is worth noting, albeit in passing, that this shows how a common law system does not necessarily guarantee a favorable reception for L&E.

33. See *infra* app. tbl.A.

34. Compare *infra* tbl.1 with app. tbl.A.

TABLE 1: WHERE DO L&E SCHOLARS WORK? FOCUS ON LAW FACULTIES AND ECONOMICS FACULTIES BY COUNTRY³⁵

	Population	ALEA number		EALE number		ALEA+EALE number		per 10 million inhabitants	
		law	eco- nomics	law	eco- nomics	law	eco- nomics	law	eco- nomics
Europe*	454,458,854	24	94	112	412	136	506	2.993	11.134
Austria	8,210,281	0	0	2	5	2	5	2.436	6.090
Belgium	10,414,336	2	0	6	8	8	8	7.682	7.682
Czech Republic	10,211,904	0	2	0	3	0	5	0	4.896
Denmark	5,500,510	0	1	0	3	0	4	0	7.272
Finland	5,250,275	0	0	0	1	0	1	0	1.905
France	64,420,073	0	2	4	62	4	64	0.621	9.935
Germany	82,329,758	5	17	21	92	26	109	3.158	13.239
Greece	10,737,428	0	0	0	2	0	2	0	1.863
Hungary	9,905,596	0	2	0	3	0	5	0	5.048
Italy	58,126,212	0	27	26	169	26	196	4.473	33.720
Luxem- bourg	491,775	0	0	2	0	2	0	40.669	0
Nether- lands	16,715,999	5	14	27	13	32	27	19.143	16.152
Norway	4,660,539	0	0	1	7	1	7	2.146	15.020
Poland	38,482,919	0	0	2	0	2	0	0.520	0
Portugal	10,707,924	0	1	0	0	0	1	0	0.934
Spain	40,525,002	4	9	9	14	13	23	3.208	5.676
Sweden	9,059,651	0	2	0	9	0	11	0	12.142
Switzer- land	7,604,467	0	5	4	7	4	12	5.260	15.780
UK	61,113,205	8	12	8	14	16	26	2.618	4.254

continued on next page

35. Authors employed at a law school were classified under “law;” authors employed at an economics faculty (including management, marketing, business, etc.) were classified under “economics.” Authors employed partly at a law school and partly as economics faculty were classified under “law,” since I attach special importance to the existence of opportunities for engaging in L&E work at law schools. Authors who were employed neither at a law school nor as economics faculty were classified under “law” or “economics” based on their original training, but scholars with a degree in neither law nor economics were kept apart as “other.” On this latter point, too, I consciously opted to follow the working method used by Gazal-Ayal. See Gazal-Ayal, *supra* note 4, at 491.

TABLE 1—*Continued*

Israel	7,233,701	36	6	31	13	67	19	92.622	26.266
North America	340,699,331	408	307	62	26	470	333	13.795	9.774
Canada	33,487,208	3	14	3	5	6	19	1.792	5.674
USA	307,212,123	405	293	59	21	464	314	15.104	10.221
Other		4	17	7	7	11	24		
Unknown		0	0	1	0	1	0		

*Europe, here, is limited to the European countries with conference participation.

4. The fractions of participation from European law schools are still far below the North American level (Table 1). In Europe, internationally visible L&E research remains largely a matter for economics faculties. No change is to be reported yet with regard to this already widely documented and discussed fact.³⁶

5. Various European countries, however, show divergent profiles in terms of the mutual relation between law faculties and economics faculties. In some countries, law schools appear to engage in little or no international L&E research, which remains the province of economics faculties: Denmark, France, Germany, Italy, Norway, and Sweden.³⁷ In a few countries, there is a balance in the contribution from the two academic backgrounds—this is the case in Belgium and the Netherlands. Spain and the United Kingdom appear to be evolving in that direction as well.

36. See Garoupa & Ulen, *supra* note 3; Gazal-Ayal, *supra* note 4; see also app. tbl.A.

37. See *infra* app. tbl.A. The figures for Italy and France are, to a large extent, influenced by the fact that those countries organized the EALE annual conferences in 2009 and 2010, respectively. The number of attendees from the organizing country peaked in the year of the EALE conference: 4 for 2008, 22 for 2009, and 42 for 2010 for France; and 27 for 2008, 116 for 2009, and 68 for 2010 for Italy.

TABLE 2:
L&E SCHOLARS WORKING IN EUROPEAN LAW SCHOOLS:
ORIGINAL TRAINING³⁸

Original Training	Current Affiliation					
	ALEA and/or EALE participations			Distinct scholars		
	Law	Law & Economics	Law/ Economics	Law	Law & Economics	Law/ Economics
Economics	15	4	10	10	2	6
Law	77	9	1	51	2	1
Law/ Economics	12	1	3	7	1	3
Law & Economics	5	0	0	2	0	0
Other	2	0	1	2	0	1
Unknown	7	0	3	7	0	2

6. More than one out of four of the European L&E scholars attached to law schools are economists or scholars with degrees in both law and economics (Table 2).³⁹ These economists mainly work in German (10), Dutch (7), and Italian (4) law schools.⁴⁰

The absence from the international L&E discourse of several former Eastern Bloc countries or former parts of Yugoslavia, which joined the European Union in 2004, is not surprising. The transition from a planned economy, with its concomitant legal system, to a free-market economy, with its concomitant legal system and the integration within the European Union framework and its legislation, involves considerable effort and takes time.⁴¹ The differences in subpopulations of economists and legal scholars that exist between Europe, the United States, Canada, and Israel are, according to Gazal-Ayal, essentially attributable to differences in academic incentives that make participation in the English-language international L&E discourse a cost-effective investment.⁴²

38. A scholar with "Law/Economics" training has a degree in law as well as in economics; a scholar with a "Law/Economics" affiliation holds a position in a law school as well as an economics faculty. A scholar with "L&E" training has a L&E degree; a scholar with a "L&E" affiliation works in a L&E institution that is part of neither a law school nor an economics faculty. L&E degrees and institutions are nearly exclusively a Dutch phenomenon.

39. The only other nonlaw training we found for L&E scholars in European law schools is political science. More specifically, we found two political scientists and one scholar with a degree in law as well as political science.

40. A few worked in French, Norwegian, and Swiss law schools: two, one, and one respectively.

41. See András Sajó & Kinga Pétervári, *Law and Economics in Hungary*, in *ENCYCLOPEDIA OF LAW AND ECONOMICS*, *supra* note 2, at 240. For the efforts that joining the European Union requires from the local legal communities, see, for example, Risto Nuolimaa & Pekka Timonen, *Law and Economics in Finland*, in *ENCYCLOPEDIA OF LAW AND ECONOMICS*, *supra* note 2, at 146.

42. Gazal-Ayal, *supra* note 4, at 498–501, 505–06.

What is interesting about this argument is the assumption of a rational decision, in which weighing the pros and cons determines publication policy. The fraction of researchers with original training as economists engaged in L&E work at European law faculties was higher than I expected.⁴³

There is one point that is truly important for a proper understanding of the data I gathered, which is that the data concerning L&E research at European law schools, presented in Table 1, tell different stories from those that would be conceived from a strictly U.S. perspective. When we look at the results for the United States, we know that a legal scholar subpopulation of 15.1 per ten million people is just the tip of the iceberg. The authors in question are L&E scholars, scholars who do not see themselves as L&E scholars but from time to time do write an L&E paper, and perhaps even a few judges. We know that their work has an impact on case law and legal practitioners.⁴⁴ This image—of a cadre of hardcore scholars with an impact spreading out to everyday legal practice—should not be associated with any of the European figures. It could lead to overestimation, but also to underestimation, regarding the extent to which, and the way(s) in which, L&E has found its way into legal scholarship in Europe. For instance, there can be no doubt whatsoever that the 7.68 law school scholars per ten million people in Belgium represent the main body of the iceberg, rather than just its tip. In my country's legal community, the local substrate of L&E scholars beneath the small group of internationally visible scholars is very shallow. Conversely, the low figures for Germany may lead us to underestimate the extent to which L&E has secured a place in German legal circles.⁴⁵ The relatively low figures for Spain also do not match the rest of our information concerning the extent to which L&E has found a place there; part of the research output is drained by other channels.⁴⁶

To complete what precedes, I would also like to devote some space to the case of Israel. In no other country, not even in the United States, has L&E achieved such a dominant position. There are, comparatively speaking, many times more legal scholars and economists with international publications in Israel than in the United States.⁴⁷ Similarly, the data documenting the internationally visible L&E activity tell us little. Sandberg recently published an article in the *Global Jurist* investigating to what extent the strong influence of U.S. legal education on Israeli le-

43. Cf. Garoupa & Ulen, *supra* note 3, at 1574–75.

44. *Id.* at 1575 (“[I]t is virtually impossible to have a substantive discussion about a legal matter in the United States without having input from law and economics . . .”).

45. See *infra* Part II.B–C.

46. See *infra* Part II.B–C.

47. See *infra* app. tbl.A.

gal education impacts the knowledge and practice of law in Israel.⁴⁸ I have read a few things in that article that are worth thinking about. I let Sandberg speak:

This [economic analysis of law] was adopted by Israeli jurists with such fervency that the percentage of Israeli researchers engaged in this field is now extremely high, both in relation to the size of Israel and in relation to the other fields of research. However, the degree of influence which this approach had on Israeli common law was small and, in most cases, its principles were rejected as a source of inspiration for the rulings of the courts. At times, the application of economic analysis by some Israeli judges is done for rhetorical purposes only and occasionally, when judges implement the economic theory, the results are far from those which the theoretical analysis should have produced.⁴⁹

The tendency to reach a deeper comprehension of the rationales and values behind the law has come at the expense of contact with the broader population of jurists. The gap between the level of abstraction and rationalization of academic writing and the immediate needs of an attorney or a judge who is deliberating on an issue has grown much larger. Academic writing does not provide a sufficiently incisive and exact response for someone who needs in-depth knowledge of the Israeli law and its precedents The subjects of papers that were written for publication in the U.S., as well as the authorities quoted in them, may be completely foreign and unknown to Israeli practitioners. These publications are not naturally accessible to most Israeli legal consumers. . . . The . . . result of the trends described above was the reduction in the extent of the students' knowledge, and at times, even the lecturers' knowledge, of the sources of Israeli law and of doctrine-based research of the domestic law. . . . In the absence of the importance being attributed to the investigation of Israeli sources in legal research, and in the absence of adequate training in connection with identifying Israeli sources, there is a fear that a new generation will emerge with a lack of knowledge of the sources of Israeli law.⁵⁰

Like the Belgian and German data, the Israeli figures suggest that, outside the United States, there exists a delicate balance between thriving L&E work with participation in the international L&E discourse on the one hand, and legal scholarship embedded in local domestic law on the other; that there appears to be, to a rather great extent, an either/or choice between the two; and that there runs a fault line between the two which does not appear, or at the least appears less, to exist in the United States. I will return to this point later in the discussion.

48. Haim Sandberg, *Legal Colonialism—Americanization of Legal Education in Israel*, GLOBAL JURIST, Mar. 2010, at 1.

49. *Id.* at 11–12 (citations omitted).

50. *Id.* at 8–10.

B. What About L&E Education in European Law Schools?

Roel and Nicky, who supplied research assistance for this Article, graduated in 2005 and 2008, respectively—Roel from the law school of the Catholic University of Leuven and Nicky from the law school of the University of Antwerp. Upon graduation, neither of them had taken a L&E class. Moreover, none of the classes they had throughout the five years of law school (constitutional law, administrative law, European law, property, contracts, torts, competition, and so on) had any economic analysis of the law integrated in their teaching. Before joining the Ghent Centre for Environmental and Energy Law, Roel only vaguely knew that L&E existed, but he was not able to give the phrase any content. Of the seven Belgian law schools with a full law curriculum (a three-year Bachelor in Law and a two-year Master in Law), only four schools offer a class in L&E: the Catholic University of Leuven, the University of Antwerp, the University of Ghent, and the Catholic University of Louvain. None of these classes is compulsory. All of them are “lightweight classes” in number of hours and credits involved. As for the six other universities offering a partial law curriculum (limited to the Bachelor in Law), only one offers an L&E class, making its students join the Catholic University of Leuven class in the master’s program. What surprised me most when computing these facts was that the situation had made no progress since the days when De Geest wrote the Belgian chapter for Bouckaert and his encyclopaedia in 1998.⁵¹ The integration of L&E in the teaching of the traditional legal courses (constitutional law, administrative law, property, torts, criminal law, and so on), something that could happen instantly if the professors in charge of these courses wished it so, has not been happening, either.⁵²

My understanding is that this situation is widespread throughout Europe. The introduction of each and every law student to L&E by compulsory L&E courses or by the integration of L&E in basic traditional legal courses is neglected in the vast majority of countries. Students leave law schools as lawyers without L&E in their tool kits; without much, if any, insight into its ways of thinking, methods, and value for le-

51. Gerrit De Geest, *Law and Economics in Belgium*, in *ENCYCLOPEDIA OF LAW AND ECONOMICS*, *supra* note 2, at 128, 129. If a new L&E class was recently created at the Catholic University of Louvain, another L&E class, taught in a joint Master’s programme on legal theory at the Catholic University of Brussels and the Brussels Saint-Louis University Faculties, vanished together with the program it was part of. The Master in Economics, Law and Business Administration which was set up in 2007 at the Catholic University of Leuven, on which occasion this University conferred an honorary doctorate on Tom Ulen, offers a program with classes in law as well as in economics, but it is not a L&E programme.

52. Laurens, who graduated from the Ghent Law School in June 2010 and joined our public law department last month, took the optional L&E class but heard of no L&E in any of the other classes of the five-year curriculum.

gal work.⁵³ Only the law schools in Germany,⁵⁴ the Netherlands,⁵⁵ Spain,⁵⁶ and Switzerland⁵⁷ integrated L&E in standard legal education in a rather widespread measure.⁵⁸ Even if, generally speaking, the opportunities for getting a L&E education are continuously increasing,⁵⁹ it remains highly significant that the large majority of legal scholars are still not trained to understand L&E work. This obliges L&E scholars who choose to publish and deliver presentations locally to invest in communication.

C. Europe's Locally Oriented L&E Work

A difficulty with Europe's local literature is tracking it down. Data documenting the existence and volume of local L&E work as such are available to a limited extent. A basic amount of information is found in Bouckaert and De Geest's *Encyclopaedia of Law and Economics*. When one consults the European contributions on the development of L&E research by law scholars and in law schools, and reads through the accompanying national bibliographies,⁶⁰ one will notice that, in 1997–1998, every country had some amount of local L&E publications in law journals. In some countries—France, Germany, Italy, the Netherlands, and Spain—this flow of literature was already fairly sizeable.

The phenomenon of the national L&E associations that organize annual conferences also signals the existence of a local L&E literature. After 2000, several national associations were set up in Europe, and

53. The extent to which this situation differs from that in the United States is not entirely clear to me. As far as I know, not a single U.S. law school has a compulsory L&E course and the extent to which L&E is integrated in traditional legal courses varies strongly from law school to law school.

54. See Schäfer, *supra* note 1.

55. Rudi W. Holzhauser & Rob Teijl, *Law and Economics in the Netherlands*, in *ENCYCLOPEDIA OF LAW AND ECONOMICS*, *supra* note 2, at 274, 279–80.

56. See Fernando Gomez, *Developments of Law and Economics in Spain*, *EUR. ASS'N L. & ECON.* (Sept. 21, 2009), http://ealeorg.blogspot.com/2009_09_01_archive.html; see also Santos Pastor & Jesús Pintos, *Law and Economics in Spain*, in *ENCYCLOPEDIA OF LAW & ECONOMICS*, *supra* note 2, at 346, 347–48.

57. Anne van Aaken, *Recent Developments of Law and Economics in Switzerland*, *EUR. ASS'N L. & ECON.* (Apr. 22, 2009), http://ealeorg.blogspot.com/2009_04_01_archive.html.

58. Traces of some integration in the standard curriculum exist for Austria, Norway, and the United Kingdom. See Erling Eide, *Law and Economics in Norway*, in *ENCYCLOPEDIA OF LAW AND ECONOMICS*, *supra* note 2, at 309, 310; Wolfgang Weigel, *Law and Economics in Austria*, in *ENCYCLOPEDIA OF LAW AND ECONOMICS*, *supra* note 2, at 118, 120–22; see also Garoupa & Ulen, *supra* note 3, at 1575.

For the sake of completeness: the European Master in Law and Economics, see *supra* note 3, which provides L&E tuition at the postgraduate level, is, as far as Europe is concerned, offered at three law faculties—Ghent (Belgium), Hamburg (Germany), and Rotterdam (the Netherlands)—and four economics faculties—Vienna (Austria), Aix/Marseille (France), Bologna (Italy), and Warsaw (Poland). The program admits a little over one hundred students each year.

59. The breakthrough of L&E in the standard curricula of leading Spanish law schools started in the academic year 2009–2010. See Gomez, *supra* note 56. Greece is in the process of creating its first graduate program in L&E and hopes to start the courses in the academic year 2011–2012. E-mail from Aristides Hatzis, Assistant Professor, Univ. of Athens, to Carole Billiet (Oct. 28, 2010) (on file with author). There is a constant flow of new initiatives.

60. For the list of the European countries discussed in the Encyclopedia, see *supra* note 20 and accompanying text.

these have generally turned out to be fairly viable.⁶¹ They provide a structure for local L&E communities. A number of them regularly organize annual conferences that attract a majority of local participants and that, besides English, also use national languages to a greater or lesser extent: the Gesellschaft für Recht und Ökonomik (German Law and Economics Association) (2003), with annual conferences that some years are organized jointly with the French-German Talks in L&E (2004); the Italian Association of L&E (2005); and the Spanish Association of L&E (2006, first annual conference in 2010).⁶² With the exception of the German association, the annual conferences of these associations bring together scholars who most often do not figure into the scholar population of ALEA and EALE. A critical mass of local researchers is necessary to be able to organize a local annual conference.

Finally, for a few countries we have some current reports that suggest the existence of vibrant local research activity: Germany, Spain, and, to a lesser extent, Greece.⁶³

As is the case for internationally visible L&E research and education, the picture regarding locally oriented L&E work also is one with marked differences between European countries. It is difficult to make a statement about the precise importance of this local work today. But what is certain is that it exists, and that it will grow in importance. The main reason for this lies in a combination of two factors. The first factor is the growing openness to and acceptance of L&E, which logically induces more and more legal scholars to become acquainted with L&E work and to move toward the incorporation of this line of analysis into their own sets of tools. The second factor is the observation that the decision by scholars to publish locally or internationally is a rational decision, based on weighing costs and benefits, which for legal scholars favors local publication. We will now look at this idea in more detail.

61. The Scandinavian Association of Law and Economics is no longer active. E-mail from Henrik Lando, Professor, Copenhagen Bus. Sch., to Carole Billiet (Nov. 1, 2010) (on file with author). Lando added: "At the moment, Scandinavia is lagging behind." *Id.*

62. Spain and Portugal somehow also have an extended scientific forum in South America, thanks to the Latin American and Iberian Law and Economics Association (set up in 1995) (conferences in Spanish, English and Portuguese) and, to a lesser extent and for Portugal only, the Associação Brasileira de Direito e Economia [Brazilian Society for Law and Economics] (set up in 2008) (conferences in Portuguese and English). The Greek Association of Law and Economics, which was founded in 2002, organized a workshop in 2004 and a conference in 2006, both in Greek. It is planning a workshop and a conference in 2011. About half of the about two hundred members of the association are legal scholars. E-mail from Aristides Hatzis, *supra* note 59.

63. "There is a lot of work on L&E published in Greek: books, journal articles, Ph.D. theses, MA dissertations, online courses, etc." Email from Aristides Hatzis, *supra* note 59.

III. INCENTIVES FOR LOCAL L&E WORK: THE COST-BENEFIT BALANCES

The decision to publish L&E work principally in a national language and in national journals is one that legal scholars make; this kind of publication policy cuts no ice with economists. To get a more precise view of the costs and benefits that legal scholars experience when engaging in and publishing L&E research, and the similarities and differences in those with economists, I have made a small sample survey using the years of experiences with L&E research by the team with which I work. We made an exercise—economists and legal scholars each for themselves—of listing and making an exact valuation of pros and cons, costs and benefits, and of discussing the results.⁶⁴ Here follow the results of this small survey. Their relevance for legal scholarship elsewhere in Europe is analyzed next.

The interdisciplinary collaboration between law scholars and economists naturally comes at a price. Both have to invest in communication and in understanding each other's way of working and methodology. This effort takes time and energy, particularly in the early stages of collaboration. The longer people work together, the more results they achieve without noticeable additional effort. This investment can take on very specific forms, for instance investing in the L&E training of the hired junior researchers.⁶⁵ Such costs are recurrent. Furthermore, for the legal scholars on the team, interdisciplinary collaboration brings with it a penalization in the appraisal of the research output during appointment and promotion rounds. The evaluation system at the law school favors sole-author publications and penalizes coauthorship. Besides, no established code exists as of yet in academic law circles for weighing the relative contribution of coauthors to joint publications—each coauthor is given the same rating, including the first and last author.

Nevertheless, the disadvantages do not outweigh the advantages of interdisciplinary collaboration. Both legal scholars and economists in our partnership see major benefits in terms of the quality of research, albeit with different areas of emphasis. As far as the legal scholars are concerned, the added value of the collaboration lies essentially in a different way to look at the law; an additional lens with which to analyze, and eventually design, law. They also especially value the extension of the array of methods, giving access to research and results that would remain totally beyond reach when the conventional methods of legal

64. IWT/SBO Seminar at the University of Ghent (Oct. 22, 2010).

65. For example, we ask our full-time junior researchers to attend the L&E course in Ghent or Leuven and to take the exam on the subject.

scholarship are employed.⁶⁶ The economists, for their part, see the quality gains in the enhanced robustness of research hypotheses and analyses, yielding results that they consider more solidly founded and more variegated. Law scholars and economists alike find a lot of pleasure in working together.⁶⁷ In addition, both disciplines discern an increased likelihood of socially relevant results and, more generally, social valorization, which is something they appreciate. As regards the access to proper research funding, the advantages of the partnership are perceived very differently by the two disciplines. For the legal scholars, the interdisciplinary collaboration confers a ticket to research grants that otherwise are very hard, if not impossible, to come by: loans to fund several full-time researchers for four to five years. Money that means freedom.⁶⁸ For the economists, such research funds are relatively easy to obtain, even for purely economic research. For them, the advantages in terms of better research funding lie essentially in the access to networks of practicing legal experts and to legal practice data, which are both assets in setting up and carrying out research that helps to analyze law.

So there are plenty of benefits for both disciplines in working together. When balancing the pros and cons of the interdisciplinary collaboration, neither lawyers nor economists experience a disciplinary barrier. Moreover, interdisciplinarity is an asset in access to research funding. It is worth noting that the quality of the research output—knowledge and expertise—and the access to more or stronger socially relevant research outcomes provide an added value that has a far wider reach than the academic career incentives that are central to Gazal-Ayal's analysis.⁶⁹ Indeed, I observed that those two motives also play a key role in the acceptance of L&E work by the legal community as a whole, beyond the confined circle of the law schools, including judges, public prosecutors, barristers, administrative lawyers, corporate lawyers, and legislative experts.

When it comes to publishing the research output, the main option of the economists is firm: papers must be sent to international English-language journals with the highest possible ranking and impact factor. That type of publication only offers a gateway to the economic academic forum and counts in the academic assessment of research groups and in

66. A good example is the use of regression analysis to investigate the wide discretionary policy margins available to the criminal courts and the administration.

67. As Roel Meeus phrased it at the IWT/SBO Seminar, expressing a pleasure that all lawyers and economists present were sharing: the interdisciplinary collaboration is "simply furiously interesting." Roel Meeus, PhD student, IWT/SBO Seminar at the University of Ghent (Oct. 22, 2010).

68. Since the start of our L&E collaboration in 1996, we have obtained €2,656,460 worth of competitive research funds, for an average term of four years. For the most recent project we received €1,595,460.

69. See Gazal-Ayal, *supra* note 4, at 487–89.

the academic appointment and promotion opportunities of individual researchers.

For the law scholars, the situation is, of course, totally different. Belgian legislation and case law are drafted in Dutch and French. These are also the languages of the Belgian legal community. Embedding L&E research in local law and communication and discussion with the local legal community are essential; we incorporate L&E in our tool kits precisely in order to be able to analyze the legal issues in our field more clearly and to acquire more and better knowledge and understanding of them.⁷⁰ We have no difficulty getting L&E research published in traditional legal journals. Quite the opposite—the publications are an exclusive product in which the L&E approach is interwoven with a full knowledge and analysis of the conventional legal source material. The outcomes are publications that shift the boundaries of our knowledge, publications that are highly rated.

Publishing the research output on the international forum and in English, on the other hand, involves a great deal of trouble for limited return. The problems go beyond the language barrier and getting accustomed to other publication formats, reference rules, and submission practices. They touch on the fundamental dimension of contents and quality of research output and the pleasure that is to be derived from it. Insofar as the research rooted in domestic law also holds relevance for the international forum—which is not necessarily the case, at least not in full scale—the need to simplify the local law for an international audience can, to a certain extent, undo what is really interesting to the author. Part of the international L&E literature, wherein an author should insert one's work, is unattractive because of the oversimplification of legal elements, a too limited connection with the reality of law and legal systems, and an insufficiently judicious and transparent handling of the comparative law dimension. The markedly longer waiting times for publication also pose a quality issue because each day brings fresh legislation and case law. Finally, the language barrier holds a certain ambivalence. When a scholar chooses to work with a translator, he or she “only” needs to invest in extra organization, time, and budgets. In the other cases, the language barrier brings with it, above all, a loss of quality of life: a diminished intellectual pleasure and convenience because a scholar cannot express one's self with the swiftness, precision, and nuance the scholar is used to in his or her own working language. After all this effort, an author would like to be read by his or her own academic forum also, but

70. “Own law” here means Belgian regional and federal law with a supranational layer of European Union law and European Court of Human Rights (ECHR) case law. In our research we deal mainly with environmental, administrative, and criminal law, but also with ECHR case law, European law, and constitutional law—not really the most classic L&E research fields. ECHR: European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, C.E.T.S. 005 (entered into force September 3, 1953).

this does not happen.⁷¹ The local legal community, meanwhile, shows very little appreciation for international work, with its concomitant simplification of the local law. This type of work is quite often seen as an escape route for someone who is lazy or incapable of doing better. The only steady plus is a wider world by way of the contacts that are made.

Over the years, the advantages and drawbacks our lawyers and economists experienced spontaneously led to a number of strategies. Joint research outcomes engender two flows of publications: publications in Belgian law journals and collections, with the legal scholars as principal authors; and publications in English-language international journals, written by the economists. The local law is fully featured in the local law publications; a synthesis is achieved between the L&E method and insights and the local law, including the latest topics and developments, where the legal aspect is treated as on par with traditional doctrine. We make sure to provide additional useful information for the benefit of our readers and to anticipate and rule out misunderstandings. This investment allows us to build up credibility. We write as we are used to writing as legal scholars—fairly extensively and in detail, with plenty of footnotes. The economist is the coauthor. The English-language international publications are, to a large extent, produced by the economists. They cast the research outcomes in conventional, fairly short economic formats and outlines, enhance the economic theory aspects, simplify the legal dimension, and generally highlight one specific aspect. Sometimes the law scholar is a coauthor or is cited in a footnote with acknowledgment for useful comments. The legal scholars also sometimes do something that the economists never do: now and then they attend an EALE or ALEA conference without a paper. This enables them to plug efficiently into current international developments.

The question whether the cost-benefit analysis I have sketched with regard to the publication choices made by Belgian law scholars has any relevance for law scholars elsewhere in Europe is one I would answer affirmatively. As to the question of whether the situation will evolve in the not-too-distant future in such a way that the research output becomes internationally visible and accessible to a large extent, I would say no.⁷² I do believe that in Europe, too, more and more legal scholars will incorporate L&E in their sets of tools, but that in the short- and medium-term

71. At the IWT/SBO Seminar, Luc Lavrysen expressed this fact in a very telling way: “Nobody reads you.” Luc Lavrysen, Dir., Ctr. for Env’t Law & Energy Law at Univ. of Ghent, Judge in the Belgian Constitutional Court, IWT/SBO Seminar at the University of Ghent (Oct. 22, 2010). Noteworthy is the fact that the economists present at the seminar worded in a very similar way a reason why they could not consider to public in local journals: if publishing locally, “nobody” would read them.

72. For an identical viewpoint with regard to Germany’s local L&E literature, see Schäfer, *supra* note 1.

they will continue publishing mainly locally and in their own languages. Why?

1. Very marked in the results of the small sample survey I made is the high value accorded to the benefits that L&E research brought to research possibilities and quality. This incentive has a wide-reaching relevance. Individuals who choose to build a professional career at the university have a love for knowledge and finding new things, and a passion for excellence in their areas of specialization. Legal scholars across Europe are increasingly likely to come into contact with L&E. Once scholars realize that they acquire more knowledge and build up a greater expertise with L&E than without L&E, they go for it. The disciplinary barrier exists for European legal scholars no more than it does for U.S. legal scholars: interdisciplinarity requires an effort, but does not form a hard barrier. Knowledge, expertise, and excellence have a deep pull. In addition to this, it is very probable that, elsewhere in Europe, legal scholars investing in L&E research do gain, as in Belgium, an improved access to proper research funding. Research funds that finance groundbreaking and innovative research exist throughout Europe in all sorts of institutional forms: university research funds, private foundations, state funds, European funds, etc. They provide research funding over several years and budgets for hiring and training junior researchers. For decades they have embraced and valued interdisciplinarity, and precisely for this reason they are important for L&E in general, and legal scholars looking to engage in L&E research in particular. More so than scholars from other faculties, legal scholars essentially receive funding for applied research. This type of research funding is short-term (six months, one year, or eighteen months), offering a budget that leaves very little room for hiring and training junior researchers. For legal scholars, the improved prospect of access to proper funding therefore makes a difference, all the more so because law schools generally do not value interdisciplinarity in their recruitment and promotion policies, and this benefit makes up for that shortcoming.

2. The publication decision with priority for publications in the local language addressing the national academic forum and legal community is inherent to the choice of research subject: domestic law. The study of local law is what legal scholars do and want to carry on doing; L&E is a tool with which to do it. What could alter this orientation is a faculty-based publication policy that strongly values international English-language publications in the appointment and promotion policies and thus would steer research output in that direction.⁷³ It seems unlikely, however, that European law schools would develop a publication policy in which ties with local law are abandoned.

73. See Gazal-Ayal, *supra* note 4, at 506.

In years passed, Belgian law schools have gone through a debate involving such radical changes of course in publication policies, directing publication firmly to international English-language journals. The debate originated from a change of the public financing policy of Flemish universities.⁷⁴ Until rather recently, the research output of academic scholars had no impact on the division of public research funds between our universities. In 2008, however, the division of those budgets became highly dependent on the number of international publications of each university and the number of citations these publications managed to gather.⁷⁵ The Web of Science (WoS) was selected for data input of the evaluation counts (subdatabases Science Citation Index Expanded, Arts and Humanities Citation Index, Social Sciences Citation Index, and Conference Proceedings Citation Index).⁷⁶ The new research financing legislation, with a very strong valuation of publication in English-language international journals, led to fierce protest in the social and human sciences faculties. They felt that the performance criteria ignored, in too flagrant a way, the communication patterns that were theirs since “always,” communication patterns in which, generally speaking, English-language publications and publications in journals are far less important than in the positive sciences.⁷⁷ Today, this debate is past its peak. The decision was taken to work out a specific performance indicator for the social and human sciences by building a new Flemish database: the VABB-SHW (Vlaams Academisch Bibliografisch Bestand voor de Sociale en Humane Wetenschappen, or Flemish Academic Bibliographical Database for the Social and Human Sciences).⁷⁸ A powerful motive for this choice was the understanding that, in the absence of an appropriate performance indicator, the locally oriented communication patterns of the sciences involved would be strongly jeopardized, by which their sociocultural role would, for the greater part, be lost. This, it was appreciated, could lead to a very serious impoverishment of our society, an impoverishment that was very unwelcome. The VABB-SHW includes publications based on the fol-

74. For a general discussion of the origin and development of this debate, see, for example, Nathalie Stevens & Tim Engels, *Communicatiepatronen in de Sociale en Humane Wetenschappen: Naar een Empirisch Gefundeerd Debat [Communication Patterns in Social and Human Sciences: To An Empirically Based Debate]*, TIJDSCHRIFT VOOR ONDERWIJSRECHT EN -BELEID [J. EDUC. L. & POL'Y] 544, 546-48 (2009-2010).

75. Decreet betreffende de financiering van de werking van de hogescholen en de universiteiten in Vlaanderen [Flemish Parliament Act] of Mar. 14, 2008, BELGISCH STAATSBLAD [Official Gazette of Belgium], June 26, 2008, 32790 (confirming the change in financing policy that started in 2003).

76. See Stevens & Engels, *supra* note 72, at 546-47; *Web of Science*, THOMSON REUTERS, http://www.thomsonreuters.com/products_servies/science/science_products/a-z/web_of_science/ (last visited Aug. 18, 2011).

77. See Stevens & Engels, *supra* note 72, at 544-46 (referencing extensively the international literature on scientific communication patterns).

78. See *id.* at 547; see also Tim Engels et al., *Het Vlaams Academisch Bibliografisch Bestand voor de Sociale en Humane Wetenschappen: Instrument ten dienste van een Optimaal Wetenschapsbeleid? [The Flemish Academic Bibliographical Database for the Social and Human Sciences: An Instrument Serving an Optimal Scientific Policy?]*, TIJDSCHRIFT VOOR ONDERWIJSRECHT EN -BELEID [J. EDUC. L. & POL'Y] 395, 398-99 (2008-2009).

lowing criteria, aiming at giving a quality guarantee, where the publication is the work of a human or social science researcher working at a Flemish university or university college: it is accessible to the public; it is identified with an International Standard Book Number (ISBN) or International Standard Serial Number (ISSN) number; it brings new knowledge or insights; and it has been evaluated in a peer review process by an editorial board, a permanent reading committee, and/or external referees.⁷⁹

Throughout this debate on scientific policy, law schools stood in the eye of the turmoil. The originally proposed new publication policy hurt them more than any other social or human sciences faculties. The extent to which this was true very recently has been corroborated empirically. On December 1, 2010, the first edition of the VABB-SHW, documenting research output for the years 2000 through 2009, was made public, and at the same time the first research results using the data to, for example, study differences in scientific communication patterns between the social and human sciences, was disclosed. Of all social and human sciences, legal science appears to be rooted the deepest in local communication patterns. So, for instance, two-thirds of all registered psychology publications in journals are WoS-indexed (the top), whereas this is true for only 3.3 percent of all registered law publications in journals (the bottom).⁸⁰ The thirty journals with the most records in the VABB-SHW contain, for all social and human sciences, no less than fourteen law journals.⁸¹ The scientific policy discussion has brought law schools toward stimulating and valuing research more than before: more doctoral research,⁸² more positions for research professors, more time for academic research, and a higher valuation of research in appointment and promotion policy. But with regard to publication policy, the discussion has come to a close because the VABB-SHW provides the central performance criteria.⁸³

I can well imagine that similar discussions in other European countries lead to similar outcomes. A publication policy in universities and law schools in which ties with the local law—local legislation and case

79. See Engels et al., *supra* note 76, at 398; Stevens & Engels, *supra* note 72, at 547–48.

80. Tim Engels & Nathalie Stevens, On the First Version of the VABB: Shifts in Language Use in the Social Sciences and Humanities (2000–2009), Address at the University of Ghent ECOOM Symposium: Academic Practice in the 21st Century (Nov. 26, 2010).

81. Tim C.E. Engels, *Het Vlaams Academisch Bibliografisch Bestand voor de Sociale en Humane Wetenschappen: Achtergrond en Beschrijving [The Flemish Academic Bibliographical Database for the Social and Human Sciences: Background and Description]* 8 (June 21, 2010) (unpublished manuscript) (on file with author).

82. There are far fewer doctorates in our law schools than in the other faculties. At the law faculty in Ghent, for instance, the average number of doctoral students of a full-time professor between the beginning of 2000 and the end of 2009 was 1.7 (compared with 6.2 as a general average for all faculties).

83. Alongside that, a system of A, B, and C ratings of journals per discipline should lead to equality within the academic community. An A-rated national Dutch-language law journal would be just as highly regarded as an A-rated international English-language economic journal. This evolution is not certain yet and still needs to be confirmed.

law—are marginalized is not a realistic proposition. The conclusion of a newly published European report on bibliometric databases for the human and social sciences supports this view. It states that the future for a global and transparent measuring model for the scientific performance of the social and human sciences lies with national research documentation systems similar to the VABB-SHW, insofar as these systems would, like the VABB-SHW, be connected to universities and offer a quality guarantee for recorded publications.⁸⁴

It is a realistic perspective for the future that more and more European legal scholars will integrate L&E in their tool kits but that, in the medium-term at least, they will keep publishing mainly locally and in their own languages. It therefore seems worthwhile to pay attention to the question of what, other than hard incentives in appointment and promotion policies, could make their participation in the international debate more attractive, and/or enhance its benefits. When legal scholars working in the local format collaborate with economists, the international L&E forum continues to receive information about nationally oriented L&E work thanks to the economists. Nevertheless, I believe that the low participation of legal scholars in the international debate means a loss for everybody. The legal scholars would, from their specific expertise and concerns, analyze the same material differently and present more legally challenging and intriguing issues. A debate in which, thanks to comparative law information, a given legal issue can be modeled and analyzed through different variations in social governance, can only make for richer and more fruitful research debate and output.

IV. BRIDGING GAPS: COMMUNICATION MATTERS

For European legal scholars who do not see themselves as L&E scholars but use L&E to study the subject areas they are specializing in, communication issues arise at three levels: (1) in communication with the local scientific community, (2) in collaboration with economists, and (3) in outreach to the international scientific discourse. These issues seem important for the future development of L&E in Europe.⁸⁵

84. Stevens & Engels, *supra* note 72, at 547 (citing BEN MARTIN ET AL., TOWARDS A BIBLIOMETRIC DATABASE FOR THE SOCIAL SCIENCES AND HUMANITIES—A EUROPEAN SCOPING PROJECT 1–3 (2010)).

85. The discussion draws from personal observations and experiences. As all my L&E work happened with a team, my experiences and observations are, for the most part, also those of the team members.

A. To the National Legal Community with L&E

Within the Belgian context, my team members and I have discussed our L&E work for more than twelve years with other legal scholars and various legal practitioners: judges, prosecutors, public servants, bar members, lawyers involved in legislative work, etc. We disseminate our research findings not only through publications but also at working meetings, workshops, contacts with reviewers and editorial boards, informal contacts, etc. Over time, we noticed that investing in communication is not only necessary, but also pays off very well. A second finding was that receptivity for L&E work that connects, in a recognizable and/or relevant way, with local law is higher than for L&E work where that connection is lacking.

It is indeed our experience that investing in communication makes all the difference in the reception of L&E by our fellow legal scholars and legal practitioners. This investment is necessary but pays off so well: once they are in, they love it. What they see, once they have reached the point where they understand what we are doing, is what we saw when we set out on our L&E work, which are opportunities for new knowledge, deeper understanding, and enhanced insight in legal issues. Our experience is that people are interested in doing their jobs and in doing them well, and therefore they are interested in that which can help them do their work better. Offering a little more knowledge, understanding, and expertise, is a wonderful gate for the reception of L&E in the legal community.⁸⁶ Scholars in the field just have to make clear that this is what L&E brings.

As I can summarize now, after years of practice, communication issues come in three kinds: starters' misunderstandings, a simple lack of information about economic concepts and methods that needs to be undone, and practitioners' demands.

1. Time and again we get reactions against thinking in terms of cost-effectiveness, costs and benefits, and marginal utility. Most often they come from scholars and practitioners who did not discuss our work with us formerly. These reactions can be worded aggressively. Equity and justice can be brought up as fair damsels and knights rallying in on noble steeds to trample a lamentable purse rationality. At this same level of lack of familiarity with L&E one meets micrologic, where dropping the tiniest detail without losing scientific credibility is impossible. Here also L&E scholars are confronted with critical value accorded to actuality: how can they present data from 2007 to tell something about today? For everyday practice, keeping abreast of the latest develop-

86. As Robin Kar summarized this experience of openness when we discussed it: "That's right, there are a lot of smart people out there." Discussion between Robin Kar, Professor, Univ. of Illinois College of Law, and Carole Billiet (Nov. 19, 2010).

ments in legislation and case law is simply a matter of quality, involving “survival of the fittest” issues.

We meet all these concerns with much understanding. We went through them within our team and are just a little longer on the road. At the outset, our response to such reactions was still fairly awkward, but we gradually got it right. What we have learned to work best and teach our juniors to do is: dodge theoretical debates about justice, abstraction, and so on; always focus on the legal issue at stake and what can be done to understand and research this issue with the L&E approach (“No, do not talk about equity modeling by Atkinson and Stiglitz.”⁸⁷). We explain: “This is the research question. That is what we are doing. This is the reason why we do it this way.” We also systematically tune down the use of economic jargon. The unfamiliar concepts appear to call for negative reaction quite regularly. We reach to the logic behind those concepts and hint at the similarities with notions at the core of law. For instance, consider cost-effectiveness and the proportionality principle. We always stress that our L&E approach is just a tool to achieve additional insights and an enhanced understanding. That we give it away to add to all other understanding and insights about the issue, and that decisions to be made will be better informed decisions with rather than without this view. With that line of framing our work, we always get through, and most often quickly.

2. We have to regularly communicate about economic methods and concepts for the simple reason that the legal community does not know them. Remember that a very vast majority of European lawyers had, and still have, no L&E classes at their universities. Thus, for instance, our publications and conference talks using regression analyses require communication about the tool, what it can and cannot achieve, how to read a table with results, what a p-value is, and the like. We explain as well as we can. Here, too, it helps that we needed to solve this lack of knowledge earlier within the team to be able to do our work together.

3. The third kind of communication issue typically arises when discussing our work with practitioners. They demand L&E work based on perfect knowledge, including all nooks and crannies, of the legal issue at stake. The law involved is of course principally our law, as discussed previously.⁸⁸ As long as our explanations have not convinced them that we have done our work starting from this level of knowledge, they do not accept our results and give us no credit for them. Their concerns point at the heart of our L&E work: we use it to study a specific legal system.

87. Reaction from Sandra Rousseau (Faculty of Economics and Management of the Brussels University College) and Carole Billiet to Stef Proost (Faculty of Business and Economics of the Catholic University of Leuven), a wonderful theoretical scholar not used to communicating with legal scholars and lawyers. IWT/SBO Seminar at the University of Ghent (Oct. 22, 2010).

88. See *supra* note 15 and accompanying text.

They need assurance that we processed the law in our L&E work in a perfectly informed and relevant way.

Our experiences highlight that a short contact, a quick brush, does not give a correct picture of the measure to which our legal community is open to L&E. And the receptivity to L&E work anchored in our own law is certainly better than the receptivity to L&E work not anchored in our law.

*B. Studying Our Law and Meeting Economics:
A Collaborative Enterprise*

Within our interdisciplinary research team, we are constantly communicating when we work together in order to exchange knowledge and make decisions based on the sum of our insights. One striking constant in this ongoing dialogue is the fine-tuning of the combination of the simplifications typical of economic theory, methodology, and analysis on the one hand, and the complex reality of a specific legal system, with its intricate system connections and constraints, on the other. What is possible, well informed, and relevant? What is not possible, or lacks a significant piece of information or insight? This issue comes into play at all levels: the formulation of research questions, the choice of research hypotheses and procedure, the definition of variables in regression analyses, and others. And when we happen to work separately on a common research topic, we notice time and again that the quality of the research output suffers, and that we need to make adjustments to come to results that the lawyers as well as the economists deem to be correct. Not surprisingly, the L&E work of lawyers *in solo* is strongly limited by their lack of technique. The L&E work of the economists *in solo* is often skewed, unrealistic, or simply faulty because of a lack of knowledge of the legal system and its functioning and a lack of insight into the differences between hard and soft system constraints.

We have been wondering whether other scholars engaged in L&E research also have this ongoing dialogue and search for well informed and relevant matches between economic theory and methodology on the one hand, and law and its system operation and coherence on the other. We know we would be confronted with this to a far lesser extent if we did not work on a truly interdisciplinary basis, or if we did not embed our L&E work in a given legal system. We also have been wondering whether thinking over the fit between economic insights and the law, and making relevant mergers between both, may be less of an issue in the United States than elsewhere in the world. L&E is, above all, a U.S. contribution to legal science. The dominant strand of literature is American, bent to the legal system in the United States. In an analysis of the problems L&E has today and should solve for the future, however, Alan Schwartz also points at communication gaps between technically and

nontechnically schooled scholars in the L&E academy within the U.S. law schools and the consequences of this lack of communication for the quality of the research outcomes.⁸⁹ He pleads for “more collaborative work” to close these gaps.⁹⁰

For us, economists as well as legal scholars, the value of our joint research lies in its anchoring in our legal system, a real legal system, and the close-knit teamwork it entails. Economists’ gains, they say, are found in more relevant and realistic research questions, hypotheses, and outcomes.⁹¹

C. *Easing the Way to the International L&E Debate?*

As mentioned previously, it seems worthwhile to pay attention to the question of how participation in the international L&E discourse could be made more attractive for European lawyers using L&E as a tool in the study of subject areas of domestic law.⁹² What should become fairly common is that these lawyers produce a research output where the local body of publications is completed, for topics fit to it, with international publications; a continuum without a fault line.⁹³ Based on personal experiences, I see two opportunities that could contribute to such an evolution. The first one is linked to the rise of empirically based L&E work, and the second one relates to the handling of the comparative law perspective in international L&E publications.

1. The possibilities that Empirical Methods in Law (EMIL) offer are remarkable.⁹⁴ I foresee a wonderful future for this line of work in law and legal studies. And EMIL could also bring along a strand of literature in which the locally and internationally oriented analyses of law can rela-

89. Schwartz, *supra* note 4, at 1535–37.

90. *Id.* at 1548.

91. See *supra* notes 66–67 and accompanying text.

92. See *supra* notes 82–83 and accompanying text.

93. See *supra* notes 43–50 and accompanying text. Today there seems to exist, to a rather large extent, a trade-off between L&E work for national versus international audiences.

94. We have used EMIL for about ten years, mainly to map and analyze the use of discretion, a central feature of competences at the core of administrative and criminal law. The subject used to be Terra Incognita, out of reach as much as the moon before NASA’s Apollo program. I would like to mention one of our databases, made to examine the sanctioning of environmental crime. This database is unique to Europe in several respects. Based on individual (as opposed to aggregated) data, it documents all stages in criminal and administrative sanctioning trajectories, from notice of violation to execution of imposed sanctions under constraint. While our first databases were Excel-based, for this database we developed a software application, a Rich Internet Application, and collected the data in an embedded database (MS SQL). The concept and building methodology of the database are explained in Carole M. Billiet et al., *Milieurechtshandhaving: Een Databestand voor Onderzoek naar de Penale en Bestuurlijke Sanctioneringspraktijk [Environmental Law Enforcement: A Database to Research the Criminal and Administrative Sanctioning Practices]*, TIJDSCHRIFT VOOR MILIEURECHT [J. ENVTL. L.] 128, 128–50 (Mar. 2009). Two parts of the database, namely the first one documenting the prosecution stage (some 600 files) and the second one documenting administrative fining (650 unpublished decisions) and criminal case law (roughly 1150 mostly unpublished judgments, first instance and appeal), will go online in the Summer of 2011 and will include English-language access. Look for it from September 2011 onward on our research website, <http://www.environmental-lawforce.be/>.

tively easily find common ground. The empirical dimension establishes this work firmly in local law and reality; it also is in demand internationally where, to keep understanding data and their analyses, the erosion of the specifically local aspects has to be relatively limited.

2. On more than one occasion, my team members and I, lawyers but also economists, found the international L&E literature concerning specific research topics lacking in interest and usefulness owing to non-chalance in the handling of the comparative law perspective.⁹⁵ Lack of awareness of the relativity of certain key elements in the reasoning? Or simply a lack of clear communication about the knowledge from which the argument was built up? The comparative law dimension can be very informative for the relevance of research questions, hypotheses and results, the validity and pertinence of the research method used, and the selection of the information incorporated in, or excluded from, one's paper. Publications that display awareness of this fact, and that offer well informed and transparent communication in its regard, are far more interesting to us than those that do not. Such papers can be anchored, like our own work, in a specific legal system—for instance, German law—giving information about that system with a comparative law framing of the relevance of the whole in view of theory. They very certainly also can be publications using hypothetical law when they clearly state: the legal setting, solution, we consider, is such and so, being aware that other possibilities exist, for instance this and that one. Perhaps judicious and transparent communication with regard to the comparative law dimension in international publications should become a topic in L&E courses⁹⁶—for instance, in the courses in comparative L&E given in the EMLE.⁹⁷

95. See *supra* note 69 and accompanying text.

96. In their wonderful textbook on empirical methods in law, Lawless, Robbenolt, and Ulen insert a chapter identifying and discussing the special challenges to deal with when communicating and writing about EMIL-based work and how to handle (and not handle) them. ROBERT M. LAWLESS ET AL., *EMPIRICAL METHODS IN LAW* 369–93 (2009). A parallel of this chapter focusing on the points to deal with when communicating and writing about L&E work with a comparative law dimension could be a widely useful tool.

97. See *supra* notes 3 and 58 and accompanying text. The EMLE courses, which introduce the comparative law perspective, are focused chiefly on content matters. Risks, rules of thumb, and practical guidelines in the communication of research outcomes with a value codetermined by a comparative law dimension, are, as far as I can see when reading the syllabi, not discussed nowadays. Patrick Leyens, *Foundations of Law and Economics (Part II): Comparative Law and Economics*, EUROPEAN MASTER IN LAW & ECON., http://www.emle.org/Subpages_rubric/index.php?rubric=First_Term#hamburg4 (last visited Aug. 18, 2011); Alessandro Pomelli, *Foundations of Law and Economics (Part II): Comparative Law and Economics*, EUROPEAN MASTER IN LAW & ECON., http://www.emle.org/Subpages_rubric/index.php?rubric=First_Term#bologna3 (last visited Aug. 18, 2011).

V. CONCLUSION

The reception of L&E in European law schools varies a lot from country to country. When I add up all the information I could gather about internationally visible research, education, and locally oriented research, the stronghold of L&E in Europe is, in my opinion, Germany. Italy likely follows next. Spain has begun a strong move forward. In Switzerland also, much is on the move. In other countries, the L&E reception stagnates—for example, in Belgium and the Scandinavian countries. For a number of other countries, I found no trace of L&E activity: several former Eastern Bloc countries, a couple of small southern states—Cyprus and Malta—and, surprisingly, Ireland.

It is not sufficient to look to the internationally visible research output to get a view of the extent to which L&E penetrated the legal community of a European country and found a place in its law schools. In a majority of European countries, L&E is used, to a greater or lesser extent, to study domestic laws and legal systems. The research outcomes are written down in each country's language and published in local journals. The scientific forum is the local legal community. The authors are essentially legal scholars, more specifically legal scholars who do not see themselves as L&E scholars but have integrated L&E into their tool kits to study the subject areas in which they have specialized, possibly working in association with economists. In using L&E in this way, these legal scholars do the same things as many legal scholars in U.S. law schools: now and then they write a L&E paper, but publish most often classic legal work covering their own subject areas. Because their work happens to use the local language, they lack international visibility. They form Schäfer's "dark matter."

In a certain way, this hidden L&E activity chiefly gives the standard of measure in which L&E methodology has been accepted by legal scholarship in a European country. The work format indeed implies, by its nature, that the legal scholars concerned have given this methodology a place in their tool kits on an equal footing with all other classical approaches, and are willing and able to use it—by themselves or in association with economists—on fresh legal materials. Logically, L&E work within this format is bound to expand steadily in coming years.

To communicate about their research outcomes, the legal scholars who use L&E to examine local law have to bridge the gap to a legal community that, except for some scarce individuals, has had no L&E education. One of the most striking facts about the current state of L&E in Europe is that, up to now, the very vast majority of law students graduates as lawyers without having heard about L&E during their legal studies. Curiously, this situation does not seem to pose a real problem for discussing L&E research outcomes. Our experience is that an investment in communication is strictly necessary, but that this investment pays off generously. People are interested in doing their jobs and in

doing them well. More knowledge, understanding, and expertise are wonderful gates for the reception of L&E in the legal community.

The anchorage of L&E work in local law hinders its full international visibility, but nevertheless makes it interesting internationally. The comparative law dimension is a huge reservoir of potential contributions to relevant research questions, hypotheses, *modi operandi*, and results. A debate in which a given legal issue can be modeled and analyzed from several perspectives, thanks to comparative law information, can only make for a more fruitful debate. That this potential is present in the confrontation of the economic methodology with local law and legal systems is confirmed by our economists. In this confrontation, they say, they find additional new insights and knowledge that create the value of their work in the international debate.

The question then becomes: what can be done to bridge this other gap? More specifically, what can be done to stimulate the participation of local L&E legal scholars in the international L&E discourse? Normally, those scholars consciously avoid publishing internationally, a rational decision that is the outcome of weighing the pros and cons of publishing nationally and internationally. In the balance of pros and cons, no major shift will come from academic structures. But perhaps the publishing climate holds opportunities. The question is all the more relevant because the hidden L&E work is bound to expand. Some information about local L&E work reaches the international level, thanks to economists, but its legal variant has value of its own. In my opinion, EMIL-based work could provide a strand of literature in which common ground between the national and the international can relatively more easily be found to full satisfaction of both local authors and the international audience. Also, publishing policies aware of the comparative law dimension, requiring clear communication in this regard from their authors, are more attractive to local L&E legal scholars than those that are not.

Finally, also in this local working format, L&E keeps raising the issue of good and ongoing communication between legal scholars and economists. Real interdisciplinarity gives the richest and best research output. Without economists, there can be no sound L&E in law schools.

APPENDIX
SCHOLARS PARTICIPATING IN THE INTERNATIONAL L&E DISCOURSE IN
2003–2005: NATIONALITY AND DOMINANT DISCIPLINE

TABLE A:
L&E IN 2003–2005: NATIONALITY AND DOMINANT DISCIPLINE

Countries		L&E Articles and Conferences (nationality and dominant discipline)				L&E Articles (nationality and dominant discipline)				L&E Conferences (nationality and dominant discipline)			
Population	Country	Number of participants		Per 10M people		Number of participants		Per 10M people		Number of participants		Per 10M people	
		Law	Econ	Law	Econ	Law	Econ	Law	Econ	Law	Econ	Law	Econ
	North America												
299,093,237	U.S.A.	318	317	10.63	10.60	106	258	3.54	8.62	212	59	7.09	1.97
32,251,238	Canada	21	27	6.51	8.37	6	21	1.86	6.51	15	6	4.65	1.86
7,109,929	Israel	80	18	112.52	25.32	22	13	30.94	18.28	58	5	81.58	7.03
400,369,441	Europe*	83	339	2.09	8.47	33	205	0.82	5.12	50	134	1.25	3.35
8,188,806	Austria	0	9	0.00	10.99	0	6	0.00	7.33	0	3	0.00	3.66
10,481,831	Belgium	11	11	10.49	10.49	5	8	4.77	7.63	6	3	5.72	2.86
5,425,373	Denmark	0	20	0.00	36.86	0	14	0.00	25.80	0	6	0.00	11.06
5,260,970	Finland	0	6	0.00	11.40	0	6	0.00	11.40	0	0	0.00	0.00
61,004,840	France	0	64	0.00	10.49	0	22	0.00	3.16	0	42	0.00	6.88
82,515,988	Germany	14	69	1.70	8.36	4	47	0.48	5.69	10	22	1.21	2.67
11,275,420	Greece	8	14	7.10	12.42	3	12	2.66	10.64	5	2	4.43	1.77
4,065,631	Ireland	0	1	0.00	2.46	0	1	0.00	2.46	0	0	0.00	0.00
59,115,261	Italy	18	34	3.04	5.75	9	15	1.52	2.54	9	19	1.52	3.21
16,386,216	Netherlands	8	19	4.88	11.60	4	18	2.44	10.98	4	1	2.44	0.61
4,632,911	Norway	1	4	2.16	8.63	0	2	0.00	4.32	1	2	2.16	4.32
10,501,051	Portugal	1	11	0.95	10.48	0	8	0.00	7.62	1	3	0.95	2.86
44,351,186	Spain	7	22	1.58	4.96	3	14	0.68	3.16	4	8	0.90	1.80
9,076,757	Sweden	0	6	0.00	6.61	0	3	0.00	3.31	0	3	0.00	3.31
7,488,533	Switzerland	1	7	1.34	9.35	0	6	0.00	8.01	1	1	1.34	1.34
60,139,274	U.K.	14	42	2.33	6.98	5	23	0.83	3.82	9	19	1.50	3.16
	Others	8	15			16	77			8	62		

*Europe, here, does not include the United Kingdom.

Source: Gazal-Ayal, *supra* note 4.

Nationality: “[N]ationality was not defined according to the current affiliation of the scholar, but according to the country in which the scholar gained his/her first academic degree.” *Id.* at 490.

Dominant discipline: “[A]uthors from law schools were categorized as legal scholars, while those affiliated to economics departments, as economists. . . . Authors not affiliated to either a law school or an economics department were categorized as lawyers or economists based on their last degree. Scholars with no degree in law or economics [appear as] ‘neither’” *Id.* at 491.