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# LAW AND MACROECONOMICS AS MAINSTREAM†

Review Essay of Yair Listokin, *Law and Macroeconomics: Legal Remedies for Recessions* (Cambridge, MA: Harvard University Press, 2019)†

*In spite of its name, economic analysis of law is mostly unconcerned with money and markets. In a recently published book,* Law and Macroeconomics: Legal Remedies for Recessions*, Yair Listokin challenges this doubtful convention. He advocates 'expansionary legal policies' to stimulate the economy when monetary policy reaches the zero lower bound and becomes ineffective. This proposal is presented as a straightforward application of mainstream economic views, not a heterodox deviation. My review considers how the book's main arguments depart from established views in economic analysis of law and discusses how its applications fare in light of the Keynesian perspective that the book purports to uphold.*

*Keywords:* economic analysis of law, expansionary legal policy, law and economics, law and macroeconomics, LawMacro, macroeconomic analysis of law, stimulus

In spite of its name, the 'economic analysis of law' is mostly unconcerned with money and markets. The field that employs economics to study the effects of law on behaviours and outcomes has traditionally devoted its creative energies to torts, contracts, property, corporations, and other traditional areas of law, while overlooking the implications of its conclusions for the economy as a whole. In a recently published book, *Law and Macroeconomics: Legal Remedies for Recessions*, Yair Listokin challenges this doubtful convention.

Listokin advocates 'expansionary legal policies' to stimulate the economy when monetary policy reaches the zero lower bound (ZLB) and becomes ineffective (10–12). Put simply, if the economy tanks and base interest rates are already extremely low, monetary policy loses potency. Since fiscal policy is obstructed by fears of excessive debt levels and political paralysis, aggregate demand will falter. The government response should then come from law: in order to stimulate the economy, the whole legal system should be re-crafted to induce spending. Wherever possible and viable, legislators, regulators, and judges should opt for laws, regulations, and interpretations that cause spending in the economy to go up.

This proposal represents a significant departure from established views in economic analysis of law (EAL). In particular, expansionary legal policies are premised on demand-side economics. This is revolutionary within EAL since the field has traditionally embraced the precise opposite – that is, supply-side analysis. Yet one searches in vain in the book for a discussion of the limitations or flaws in the prevailing approach. Not even a reference to the critiques of Richard Posner that

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a decade ago anticipated the turn to macroeconomics can be found in its pages.[1] For readers interested in the theory and history of the relationship between law and economics, this can be frustrating.

But from a tactical standpoint, the book's approach is understandable, maybe even laudable. Listokin speaks very matter-of-factly about the usefulness of macroeconomics to law and lawyers, implicitly submitting that the value of macroeconomics is self-evident. Above all, he emphasizes that macroeconomics is part of the mainstream of the economics profession – and that being the case, the suggestion goes, the burden of methodological justification should fall on those theorists who insist on scoffing at macroeconomics, not on the few who have embraced it.

Mainstream economics – to the extent that it can be said to exist – is a combination of distinctive micro- and macroeconomic approaches.[2] In the 1950s, neoclassic microeconomics was merged with Keynesian thought, a process termed the 'neoclassical synthesis.'[3] That paved the way for a new kind of macroeconomic instruction and textbook writing that share a starting point: the IS-LM curves, which is the model that introduces the economic ideas of John Maynard Keynes about the relationship between interest rates on government bonds and economic output.[4] The IS-LM is the simplest way to model how the market for goods interacts with the loanable funds. The model is still highly influential today, mostly reflecting how policy makers, professional macroeconomists, and financiers talk to each other and reason about short-run economic fluctuations.

Accordingly, money growth quickly reduces interest rates. Inflation grows slowly over time. With lower interest rates, savings become marginally less attractive than consumption, which goes up. Investment goes up as well because less profitable projects break even in comparison to the decreased opportunity cost of leaving

1 Richard Posner, *The Failure of Capitalism: The Crisis of '08 and the Descent into Depression* (Cambridge, MA: Harvard University Press, 2009) at xii ('we are learning [from the 2007–8 crisis] that we need more active and intelligent government to keep our model of a capitalist economy from running off the rails'); Richard Posner, *The Crisis of Capitalist Democracy* (Cambridge, MA: Harvard University Press, 2010) at 273 [Posner, *Crisis of Capitalist Democracy*] (the analysis in this book and my prior one is based on Keynes's masterpiece, *The General Theory of Employment, Interest and Money*). John Maynard Keynes, *The General Theory of Employment, Interest and Money* (*The General Theory of Employment, Interest and Money* (Cambridge, UK: Palgrave Macmilan, 2018) [Keynes, *General Theory of Employment*]. See also Richard A Posner, 'How I Became a Keynesian,' *New Republic* (23 September 2009), online: <https://newrepublic.com/article/69601/how-i-became-keynesian> (summarizing Keynesianism).

2 Whether there is a 'mainstream' particularly within macroeconomics is a contentious topic. See e.g. Edmund S Phelps, *Seven Schools of Macroeconomic Thought* (Oxford: Oxford University Press, 1990) (discussing seven leading schools of thought in contemporary macroeconomics: (a) the Macroeconomics of Keynes; (b) the Monetarist Tradition; (c) the New Classical School; (d) the New Keynesian School; (e) Supply-Side Macroeconomics; (f) Neoclassical and Neo-Neoclassical Real Business Cycle Theory; and (g) Non-Monetary Theories of Unemployment Fluctuation: The Structuralist School).

3 See Olivier J Blanchard, 'Neoclassical Synthesis' in *The New Palgrave: A Dictionary of Economics*, vol 3 (Cambridge, UK: Palgrave Macmilan, 1987) at 634–6 (summarizing the topic).

4 For a detailed explanation of the IS-LM model, see 205–16 (appendix) or any introductory textbook in macroeconomics.

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money parked in government bonds. Lower interest rates therefore stimulate demand in the short term, reducing idle capacity and unemployment and increasing economic output. In short, when interest rates go down, savings go down, consumption goes up, investment goes up, and gross domestic product goes up as well.

But what if, when the recession hits, real interest rates are already set at, or very close to, zero? Then monetary policy cannot be further eased, except with unconventional but less effective tools such as quantitative easing, forward guidance, credit easing, and even 'helicopter money.' What then? Either there are automatic stabilizers to increase spending (such as welfare programs) or the government resorts to fiscal spending to increase aggregate demand and stimulate growth. Or, instead, as advocated in the book, the government can implement expansionary legal policies – those that 'meaningfully stimulate spending, lie within the domains of regulators or judges and can be implemented without unreasonable time lags' (18).

Listokin's list of expansionary legal initiatives is vast: reforming the exclusion of income from employer-provided health insurance; substituting constitutional deficit restrictions with rules for a balanced budget over the cycle; and reducing regulatory requirements (and costs) during recessions (5). The mix also includes more conventional proposals, such as forgiving student loans (187–9). Noticeably, not every expansionary policy has to be legislated because 'at the zero lower bound all policymakers should consider stimulating aggregate demand' (201). After all, 'a legal decision that is right when the economy is healthy may well [become] wrong' (6). Thus, for example, regulators should set out counter-cyclical adjustments of utility rates to counter a trend of 'higher prices in downturns and lower prices in booms' (18).

Judges should also take part in this dynamic mode of law-making, although, here, Listokin adds the cautionary note that 'we should not rely on [courts] to fine-tune business cycles' (191). Courts should 'avoid expansionary legal policy' (191) for the most part since law is a 'clunky' (15) instrument of macroeconomic policy. But not always – for example, bankruptcy judges should employ their 'considerable discretion' (189) over the loans of debtors who file for bankruptcy 'by confirming more Chapter 13 plans and forgiving more debt' (189) and by favouring 'the creation or preservation of jobs' (190). Such types of measures stimulate aggregate demand because 'debtors spend' while 'creditors save' (19).[5] Moreover, at the ZLB, courts should avoid issuing injunctions and, instead, 'favor the damages remedy' because in that case 'the builder still builds, spending on workers and capital, some of which would otherwise lie idle' (19). Here, an old lesson of law and microeconomics – the superiority of damages over injunctions – is recast as a macroeconomics-based doctrine.[6]

5 For a similar point, see Atif Mian & Amir Sufi, *House of Debt: How They (and You) Causes the Great Recession, and How We Can Prevent It from Happening Again* (Chicago: Chicago University Press, 2014) at 141 ('principal forgiveness … would have transferred wealth from people with very low marginal propensities to consume to people with very high marginal propensities to consume. This would have boosted overall demand').

6 See Guido Calabresi & Douglas Melamed, 'Property Rules, Liability Rules, and Inalienability: One View of the Cathedral' (1972) 85 Harv L Rev 1089.

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Price controls, which are normally the *bête noire* of EAL, also have a place in Listokin's menu of expansionary legal policies. But wisely enough, Listokin is not endorsing the discredited types of wage and gasoline price controls employed in the United States in the 1970s, which, he reminds readers, impose 'extreme, rather than marginal, harms on the economy' (17). The smarter type of price controls envisaged by Listokin can be triggered in cases where a currency union denies an otherwise necessary currency devaluation. Greece's inability to devalue in the aftermath of its recent brutal recession is a case in point: Listokin advances that Greece's economic malaise could have been greatly improved with a statutory-based reduction of all nominal prices in the economy by a certain percentage that could mimic the currency devaluation needed to recover Greek competitiveness (160–1).[7]

Many of Listokin's proposals are creatures of his own making. Some are not. But all merit attention. Taken as a whole, however, they face the same objections that have over the years been leveraged against aggregate demand management and counter-cyclical policy-making, especially the contentions that government officials lack the motivation, technical capacity, or information to successfully implement the intended policies.[8] Consider again Listokin's suggestion of deflating prices in the Greek economy, all at once and at the same rate. Who will monitor the price reductions, and how will this be enforced? How is seasonality in prices accounted for? What happens to existing contracts between Greek and foreign parties – will they be deflated as well? The proposal to control prices seems plausible enough; the implementation, perhaps less so.

And, yet, Listokin's suggestion that law can in some cases successfully manipulate money should not be missed. Having spent most of my life in Brazil, I have experienced first-hand price freezes and other faulty experiments disastrously trying to manoeuvre currency. On the other hand, I have also witnessed a very successful experiment that bears a loose similarity to Listokin's proposal for Greece. In the mid-1990s, Brazil enacted a law separating money's functions to disaggregate payment from the unit of account.[9] Contracts in the economy were slowly denominated in a non-inflationary unit of account that was informally pegged to the dollar, while payments continued to be made in the inflationary national currency.[10] At some point, the old currency was phased out. The non-inflationary unit of value became the country's official currency, reuniting the functions of payment and unit of account. This system helped curb the four-digit annual inflation then prevailing.

Historical examples of this sort may offer useful lessons for current times when some central banks are studying the adoption of digital currency.[11] Moreover, the separation of money's functions reflects exactly what Greece's former minister

7 See also Emmanuel Farhi, Gita Gopinath & Oleg Itskhoki, 'Fiscal Devaluation' (2014) 81 Review of Economic Studies 725.

8 For an overview, see Richard A Epstein, 'Why I Will Never Be a Keynesian' (2010) 33 Harv JL & Pub Pol'y 387 at 397. See also David K Levine, *The Keynesian Illusion* (March 2015), online: <www.dklevine.com/general/illusion.5.htm>.

9 Brazilian Federal Law No 9,069 (29 June 1995).

10 For a detailed explanation, see Gustavo HB Franco, 'The Real Plan and the Exchange Rate,' *International Finance* (2000) at paras 1–11.

11 See e.g. Bank of England, *Digital Currencies*, online: <www.bankofengland.co.uk/research/digital-currencies>; 'Sweden's Riksbank Eyes Digital Currency,' *Financial Times* (15 November

of finance, Yanis Varoufakis, had proposed to deal with the country's inability to devalue – namely, a virtual currency that would coordinate the implicit devaluation that was needed (that is, the reduction of real prices in euros for Greece's products and services).[12] What Listokin imagines in his book, however, is less subtle but perhaps more effective: simply passing a law reducing all nominal prices in the economy by 10 per cent (172). It seems to be a slightly crazy idea on the surface, but who knows whether it could work out in practice? It is one of the book's highlights and serves to demonstrate that the ZLB is not the only context where expansionary legal policies can be employed (16, summarizing the situations where expansionary legal policies can be implemented).

Price controls, however, are but a distraction in the book. Its main focus is on the legal mechanisms that can induce spending when monetary and fiscal policy falter. Consistent with the Keynesian economics that inspired his work, Listokin advocates that these legal remedies should be expansionary thru the recession but contractionary during the ensuing economic upturn – the expansionary part being of course more credible than the contractionary since macroeconomic conditions change constantly while legal rules tend to endure once they are enacted.[13] Because of this, Listokin should probably have been more explicit about the need to include the contractionary aspect in his expansionary policies from the get-go. This could have been accomplished, for example, with a discussion of sunset clauses that mitigate the risk that expansionary legal policy becomes a sobriquet for unrestrained government interventionism and spending.

Another problem revolves around the accountability concerns that are inevitably raised by expansionary legal policies. Listokin is aware that such policies increase the risk of 'rogue administrators' (123).[14] He offers the antidote of limiting the agency to its 'legitimate preexisting discretion' (123). Thus, the proposal is to have agencies use their 'preexisting legal discretion toward a new purpose – stimulus' (150). Furthermore, to make sure that the agencies spend money wisely, Listokin recommends creating an Office of Fiscal and Regulatory Affairs or 'some

2016), online: <www.ft.com/content/0e37795c-ab33-11e6-9cb3-bb8207902122>; 'Uruguayan Central Bank to Test Digital Currency,' *Agencia EFE* (20 September 2017), online: <www.efe.com/efe/english/business/uruguayan-central-bank-to-test-digital-currency/50000265-3385232>; 'What Is China's Digital Currency Plan?' *Financial Times* (25 November 2019), online: <www.ft.com/content/e3f9c3c2-0aaf-11ea-bb52-34c8d9dc6d84>. See also Leonidas Zelmanovitz & Bruno Meyerhof Salama, 'Central Bank Digital Currency: The Hidden Agenda' Just Money (16 October 2020), online <https://justmoney.org/l-zelmanovitz-and-b-meyerhof-salama-central-bank-digital-currency-the-hidden-agenda/>.

12 Paul Mason, 'Can a Bitcoin-style Virtual Currency Solve the Greek Financial Crisis?' *The Guardian* (22 February 2015), online: <www.theguardian.com/commentisfree/2015/feb/22/can-a-parallel-digital-currency-solve-the-greek-financial-crisis>.

13 See Jason Furman, 'How Lawyers Can Help Macroeconomists in the Wake of Three Major Challenges' (2017) 34 Yale Journal on Regulation 709 at 741 ('regulations are generally permanent while the macroeconomic impacts are transitory').

14 Namely, '[w]hen we introduce another regulatory consideration – here, macroeconomics – we give the regulator another degree of freedom. Even if the regulation looks bad on grounds of, say, equity, environmental harm, or microeconomic efficiency, the regulator may approve it on macroeconomic grounds. But these grounds could just be a smokescreen to regulate according to the regulator's personal preferences' (148–9).

other and macroeconomics czar' (110) to ensure that the agencies follow 'expert economic advice' and apply policies 'consistently across different substantive areas of law and regulation' (202).

With respect to the accountability of courts experimenting with stimulus policies, not much is offered. The most one finds are passages proposing that '[o]nly when an appeals court would affirm a pro-debtor ruling in ordinary circumstances should the appeals court affirm a pro-debtor ruling made for the purpose of stimulating the economy' (191). The unstated reason seems to be that the case for government restraint becomes weaker when everything else fails and all that is left to prompt aggregate demand is legal manipulation. During these dramatic situations, 'a relatively small incremental increase in regulatory opportunism is a cost worth bearing' (149–50). Maybe at that point a miss is as good as a mile.

Despite the limited amount of attention devoted to checks and balances and political incentives, the book contains a number of clever defences against equally clever potential objections. For example, does expansionary legal policy compromise microeconomic efficiency? No, if we adopt a revised concept of Kaldor-Hicks efficiency that is time variant and accept that classical economics does not apply at the ZLB (140). Does expansionary legal policy create intolerable inequality? For instance, would it not be unfair that a project gets regulatory clearance when the economy is in the ZLB but an otherwise identical project gets denied at other times? Indeed, no, says Listokin, because 'the proposals are not the same' (143). Although 'the project itself may look the same,' their social cost 'differ[s] dramatically' since 'there is nothing inherently inequitable about favoring a proposal that uses an economy's spare capacity over a proposal that merely reshuffles capacity' (143).

The book also offers an interesting (albeit brief) comparison between the dangers of fiscal and legal policy and submits that regulators 'have less reason to abuse their discretion for political gain [than politicians],' so 'if opportunism is our concern, then we should readily prefer legal expansion to the alternative of fiscal policy' (149–50). Here, the differences between macro- and microeconomic analysis of law become particularly clear since the implied suggestion that expansionary legal policy can be less hurtful to liberty and welfare than fiscal policy contradicts the tradition in EAL, which is to portray the reshuffling of legal rights as greatly unpredictable and distortive and, therefore, less desirable than taxes to remedy inequality and other second-order concerns.[15]

15 See Louis Kaplow & Steven Shavell, 'Why the Legal System Is Less Efficient Than the Income Tax in Redistributing Income' (1994) 23 J Leg Stud 667 at 667 ('redistribution through legal rules offers no advantage over redistribution through the income tax system'). For a summary of the literature, see Robert Cooter & Thomas Ulen, *Law and Economics*, 6th ed (Boston: Addison-Wesley, 2016) at 7–8. But see Anne Fennell & Richard H McAdams, 'The Distributive Deficit in Law and Economics' (2016) 100 Minn L Rev 1051 at 1053 ('[t]aking political action costs into account upends the nowconventional assumption that tax-and-transfer will always trump redistribution through other means'); Zachary Liscow, 'Note, Reducing Inequality on the Cheap: When Legal Rules Should Consider Equity as Well as Efficiency' (2014) 123 Yale LJ 2478 (arguing that redistributing with legal rules can be more efficient than redistributing through taxes).

Indeed, at this point, the break-up between the book's vision of law and economics and standard EAL is quite fundamental. EAL, as we came to know it, is grounded on first-best economics, but Listokin is proposing a second-best approach.[16] Put simply, first-best economics posits that better allocation in one market improves allocation in the economy as a whole. Thus, the choice between alternative types of distortions – taxation or reshuffling legal rights – entails a static comparison to find the least costly alternative. This is clearly not Listokin's perspective. His premise is that, in a recession, the behavioural distortions of pessimist or over-indebted consumers and investors cannot be removed directly, but only dealt with indirectly, through the introduction of other market distortions that offset the first ones and increase welfare by inducing greater spending.

There is another important way in which the book departs from standard EAL. Listokin believes in the existence of an inbuilt risk of depressions and protracted recessions in a market economy. Despite concessions to a need for state regulation in fields such as securities and banking, the tradition in EAL is to view markets as self-regulating. The implication that flows from this assessment is that bubbles and macroeconomic turmoils can only come from external shocks or harmful government interference. As a result, money, interest rates, foreign exchange, employment, and inflation have been typically thought of as epiphenomenal to technological changes, exogenous shocks, and other developments but not as elements that could in themselves prompt the coming about of crises or their relief.[17]

As such, within the framework of traditional EAL, laws could safely be assumed not to offer remedies for recessions or other economic malaises, and macroeconomics could be removed from the concerns of theoreticians.[18] By contrast, the book suggests that financial frictions and leverage effects work in concert to cause and sustain downturn cycles that cannot be mitigated, let alone prevented, without government intervention (27–8).[19] Thus, markets are not self-regulating but, rather, self-destructing, from which it logically follows that government intervention and regulation is desirable and necessary. As can be seen, and despite

16 See Bruno Meyerhof Salama, 'Macroeconomic Analysis of Law Versus Law and Macroeconomics' 2020) 83 Journal of Law and Contemporary Problems 181 at 182–4 (comparing first- and second-best economics and relating the latter to macroeconomic analysis of law).

17 See Posner, *Crisis of Capitalist Democracy*, supra note 1 at 270–1 ('[t]he broader implication [to economic analysis of law of Say's Law and the Real Business Cycle Theory] was that money and interest didn't much matter; their effects on the nonfinancial economy would be undone by alert private responses … [but] this is implausible … in a money economy you don't receive a good in exchange for selling a good; you receive money. It is up to you to decide whether to use that money to buy another good or to save it, perhaps out of fear that you may need it in an emergency').

18 See Richard L Gordon, 'Law and Macroeconomics' in Boudewijn Bouckaert & Gerrit De Geest, eds, *The Online Encyclopedia of Law and Economics* (Cheltenham, UK: Edward Elgar, 2000) 661, online: <http://encyclo.findlaw.com/0620book.pdf> (this chapter argues that imperfections in the working of individual (non-financial) markets are not a clear source of macroeconomic instability and that better regulation of these markets is not the way to stabilize the economy).

19 For a similar point, see Posner, *Crisis of Capitalist Democracy*, supra note 1 at 2 ('[t]he inherent instability of a capitalist economy is a fact, not a criticism').

the absence of a direct attack against the tradition of EAL, Listokin's book and theorization are highly corrosive for prevailing views in EAL.

Less obvious, but equally important, is the fact that spreading the making of stimulus in the fragmentary way envisioned in the book should raise controversy even within enthusiasts of demand-side policies. Most macroeconomists favour discrete interventions to increase effective demand during recessions, but these interventions are normally focused on a handful of instruments that are expected to command great impact such as money, taxes, foreign exchange, and so forth. The book, however, advocates fragmentary changes across the board because 'almost every law, regulation, or other form of public policy affects aggregate demand' (200). While the book focuses mostly on debt forgiveness, remedies, bankruptcy law, and utility regulation, it also posits that this sample 'just begin[s] to explore the universe of law and macroeconomics policy options' (200).

Here, a comparison between Listokin's approach and that of John Maynard Keynes can be illuminating. Keynes viewed the rigidity of contractual and legal obligations as one of the root causes of the liquidity constraints that called for government monetary and fiscal intervention, but, importantly, unlike Listokin, Keynes did not challenge such rigidity. The point is easy to miss. For Keynes, during downturns, the search for liquidity is largely attributable to the need to fulfil pre-established and rigid commitments sanctioned by law. From that, it follows that, in such situations, savings will be hoarded in liquid assets and investments will go down, causing recession and unemployment. In short, for Keynes, effective demand goes down to a large extent precisely because of the rigidity of existing legal obligations, which are a given and cannot be changed or negotiated around. Thus, the solution is to have the government inject liquidity through monetary and fiscal interventions.

Listokin addresses the problem of faltering effective demand from the opposite angle. He proposes to make laws and contracts flexible – and, thus, to repudiate pre-established legal commitments – when monetary and fiscal interventions become impractical. Listokin wishes to solve the same problem of lack of effective demand envisaged by Keynes but with the exact opposite remedy. Instead of dealing with the consequences of faltering demand, Listokin wishes to attack its root causes. Instead of increasing effective demand with government-provided liquidity, as advocated by Keynes in the 1930s, Listokin aims to increase effective demand by doing away with the very legal commitments that cause demand to falter in the first place.

Like Keynes, Listokin accepts that decision makers will seek liquidity and reduce consumption during downturns – of course, so long as liabilities are expected to be legally discharged by the tendering of money. Yet, faced with a 'liquidity trap,' Keynes emphasized the need of fiscal policies. Listokin does not disagree, but he advocates the possibility of going one step further: any money-based obligation is a candidate for unlocking demand by means of *ad hoc* government interventions.[20] In light of this point, we could say that, while Listokin's *macroeconomics* is Keynesian, his *law and macroeconomics* is not.

20 He explains that expansionary legal policy should be employed 'only when other options (including fiscal policy) are constrained' (15).

Paul Davidson, a leading authority in the interpretation of Keynesianism, helps us here by highlighting how Keynes believed in the 'sanctity of contracts' as 'the essence of an entrepreneurial system.'[21] Contracts and property rights are mechanisms to tame uncertainty, and dealing with uncertainty is a Keynesian leitmotiv. Listokin, however, is willing to sacrifice legal rigidity and greatly increase uncertainty for the sake of boosting short-term aggregate demand and, importantly, not only in a few specific situations but also systematically and across the board throughout the whole legal system.

In contrasting Listokin's and Keynes's approaches in this way, I of course do not mean to portray the latter simply as adamant of freedom of contract and nor could I. Any reader even slightly familiar with macroeconomics knows that Keynes erected his scholarship precisely to counter the anti-interventionist bias of classical economics. For example, Keynes defended the imposition of usury laws since, for him, a ceiling on interest rates would reduce the propensity to save in relation to the inducement to invest.[22]

Keynes also advocated the imposition of foreign exchange and other forms of controls because, in his view, the propositions of laissez-faire could not hold in a money-based economy. He saw the risk of economic instability as ever-present and believed that government regulation could meaningfully reduce it. Perhaps above all else, Keynes was a man of flexible ideas that often came manifested in open-ended statements.[23] All of that makes any form of contract essentialism a bad fit for Keynes. We should also remember that Keynes possibly saw the legal system at large as something beyond his reach, and, in any case, he never developed such a thing as 'law and macroeconomics.'

Yet the fact is the scope of Keynes' intended government interventions was, in comparison to Listokin's, much narrower. Reading Keynes, one has the impression that he saw capitalism as a beautiful but dangerous creature, one whose head had to be managed by the state, and the 'head' of such a creature was to be found in the engines of financial flows and money creation. Keynes's discussion of government intervention was accordingly directed at strictly financial and monetary matters. Listokin focuses instead on legal obligations at large, not only within financial markets but also way beyond that. It is as if Listokin wants to tame the same beautiful, but dangerous, creature by placing shackles all around its body – but only when it becomes too difficult to control the beast's head.

This distinctive character of Listokin's approach should cause readers to pause when confronting the book's attempt at portraying expansionary legal policies as consistent with mainstream macroeconomics. Are they? Yes, in the sense that expansionary legal policies can be viewed as complementary to the kinds of

21 Paul Davidson, *Financial Markets, Money and the Real World* (Cheltenham, UK: Edward Elgar, 2002) at 72.

22 See e.g. Keynes, *General Theory of Employment*, supra note 1 at 174 ('a wise government is concerned to curb [interest rates] by statute and custom and even by invoking the sanctions of the moral law').

23 For a telling example, see ibid at 336 ('[t]he State will have to exercise a guiding influence on the propensity to consume partly through its scheme of taxation, partly by fixing the rate of interest, and partly, perhaps, in other ways').

unconventional monetary policies that are increasingly becoming, well, conventional, but, no, if we pay attention to the main risk entailed by expansionary legal policies – namely, that of harming the 'sanctity of contracts' and, thus, possibly, market coordination at large.

This is not to imply that the book is naïve or that the risks posed by the *ad hoc* review of preset legal obligations are ignored. On the contrary, it specifically acknowledges that expansionary legal policies would be difficult to coordinate, even if a law and macroeconomics 'czar' were to be in place (153). In fact, a whole chapter of the book is devoted to discussing the costs of expansionary legal policies, including their microeconomic impacts (139–42), although, here, readers will be surprised to find a citation of Friedrich Hayek's *Use of Knowledge in Society*[24] in support of the observation that 'wage and price controls necessarily come at great cost because they degrade the capacity of the price system to do its essential task: coordinate the market economy' (168). This reference is surprising because Hayek thought that monetary and fiscal intervention would do precisely that – degrade the ability of prices to convey the information necessary for market coordination. By the same logic, one could wonder whether the *ad hoc* interferences in property rights and the violation of legally protected expectations that take place when 'all policymakers' (201) start considering stimulating aggregate demand would not have the potential to cause even greater harm to market coordination.

Again, a brief reference to Keynes can be helpful. Keynes meant to lay the foundations for a regulatory apparatus to deal with the problem of uncertainty in the peculiar setting of a money-based economy where people's propensity to save can be assumed to be stronger overall than their propensity to invest. Now, if this assumption about the propensity to invest is true, then the risk entailed by Listokin's expansionary legal policies becomes plainly visible. In proposing that the legal system be explicitly structured around the idea of counter-cyclicality ('we should apply law and macroeconomics perspectives when the economy is robust as well as when it is ailing' [202]), Listokin is suggesting that rules can (and should) be changed again once the recession has passed; yet the exact shape and form of such future interventions remain unknown. In this setting, the fear of future malign regulatory interventions can cut back – in Keynesian fashion, we could say cut back even more – people's propensity to invest.

I do not lay out these concerns in order to repudiate law and macroeconomics as an intellectual field of study. On the contrary, I am an enthusiast, and I believe that, during prolonged economic downturns, a discussion of law and macroeconomics becomes inescapable for economically inclined legal scholars. Moreover, I completely agree when the book asserts that we should not shirk from exploring law and macroeconomics over some 'false certainty regarding monetary and fiscal policy' (147). Listokin is again correct in pointing out that 'armchair empiricism in the face of uncertain effects … has not prevented us from using microeconomics to evaluate law' (146). So let us not mistakenly think that microeconomics is robust while macroeconomics is not; this is simply not the case.

24 Friedrich Hayek, 'The Use of Knowledge in Society' (1945) 35 American Economic Review 528.

Neither am I denying that Listokin exercises caution in considering different kinds of proposals. For example, he explicitly sidesteps interventions in the labour market because, therein, he does not envision policies that are 'theoretically and empirically robust' (175). At the same time, I should mention that the degree of robustness that he requires for the proposal to lower the minimum wage to cheapen low-wage labour during the recession, which he expressly rejects (175), is much higher than the degree of robustness required from every other expansionary policy endorsed in the book. The double standard should be attributable, I believe, to ideological or political preferences.

A final comment has to do with the book's timing. It was published in 2019 when the economy was still growing and was meant to be read when 'the next Great Recession strikes' (21). Alas, now, the Covid-19 pandemic has brought the world economy to a halt, ignited a series of defaults, and dramatically raised unemployment. As we navigate a recession in zero- or negative-interest-rate territory, legislators, regulators, and courts have been twisting and flexing laws in different ways to respond to the crisis. Overall, these initiatives represent different ways to deal with the problem of disaster relief. Yet they can also be framed as 'expansionary' when inducing greater short-term aggregate spending, as is common.

This is not to say that the current recession is the one envisaged in the book. A pandemic is, first and foremost, a crisis of health care, where economic management is largely subordinated to public health and epidemiologic considerations. Moreover, Covid-19 disrupted production and supply chains and generated distinct supply-side problems alongside the familiar confidence and demand-sided ones. Thus, going forward, government will have to balance attempts to reactivate aggregate demand with policies to reallocate people and assets within different sectors to create conditions for sustainable growth – topics that, like disaster relief, understandably lie beyond the scope of this book.

At the same time, as we move forward, the law will increasingly be a significant part of conversations about economic policy and for the precise reasons identified in this book. Our response to the current crisis cannot be premised solely on monetary policy; Congress is embroiled in political deadlocks; authority continuously gets delegated to administrative agencies and courts; and policy-making will tend to be expansionary in character – so long, at least, as deflationary pressures endure. One of the accomplishments in this book is therefore that of offering a concept – expansionary legal policy – that describes many of the legislative, regulatory, and court-led efforts being set in motion worldwide. With few exceptions, theoreticians in EAL are convinced microeconomists who have historically questioned the usefulness of macroeconomics for the discussion of legal matters. In turn, macroeconomists often talk about EAL as a lesser field, a kind of 'make believe economics.' This book is a praiseworthy step toward bridging this gap.