

HOLDUPS AND HISTORY: THE GENERAL MOTORS-FISHER BODY MERGER REVISITED

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I. Fisher Body and General Motors: Conflict or Cooperation?	21
II. The Reciprocal Nature of Contractual Relations and Contractual Disputes	23
III. The Problem of Historical Observation (or, What Is a Fact?)	27
IV. Coase's Theory-driven Critique of Theory-driven Economics.....	31
V. Conclusion	33

The question is commonly thought of as one in which A inflicts harm on B and what has to be decided is: how should we restrain A? But this is wrong. We are dealing with a problem of a reciprocal nature.¹

The past is, by definition, a datum which nothing in the future will change. But the knowledge of the past is something progressive which is constantly transforming and perfecting itself.²

Chosen examples are never serious evidence for any worthwhile generalization.³

I. FISHER BODY AND GENERAL MOTORS: CONFLICT OR COOPERATION?

In a recent paper,⁴ Ronald Coase revisits the storied events leading up to General Motors' acquisition of Fisher Body in 1926, the so-called classic example of opportunistic behavior by contracting parties due to the presence

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¹ Ronald H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1, 2 (1960) [hereinafter *Coase (1960)*].

² MARC BLOCH, *THE HISTORIAN'S CRAFT* 58 (Peter Putnam trans., Vintage Books 1953).

³ RICHARD DAWKINS, *THE SELFISH GENE* 6 (2d ed.1989).

⁴ Ronald H. Coase, *The Conduct of Economics: The Example of Fisher Body and General Motors*, 15 J. ECON. MAN. 255 (2006) [hereinafter *Coase (2006)*].

of firm-specific investments.⁵ Coase traces the origins of this classic example to a paper by Benjamin Klein, Robert Crawford, and Armen Alchian⁶—a paper published in the *Journal of Law and Economics* of which Coase himself was the editor at the time of its publication – and to several subsequent papers by Klein writing alone.⁷ But Coase smells a rat: “The problem with this widely used example is that the events never happened.”⁸ According to Coase and several other scholars, it now turns out that the relations of Fisher Body and General Motors were, in fact, cooperative and not opportunistic after all.⁹ The revised view of the *Fisher Body-GM* affair thus appears to be gaining the upper hand, and I shall refer to this account as the *Coasean view*.

Coase, moreover, does not dispute the standard account of the *Fisher Body-GM* merger for its own sake. Instead, he concludes his paper by making a larger point about the conduct of economics in general. According to Coase, the standard account of the *Fisher Body-GM* affair is symptomatic of what is wrong with economics overall. He asserts that economics has become a theory-driven subject and that professional economists should do more careful empirical work. “What is needed is a change in the way economics is conducted. If our discussions are to have any value, our theories must have an empirical basis.”¹⁰ Coase thus addresses two separate and important questions in his 2006 paper. One question is historical: what was the nature of the relationship between Fisher Body and General Motors? The other question is methodological: has economics become a theory-driven subject as Coase alleges?

I shall explain why Coase’s approach to both questions appears to be wide off the mark. While the weight of the historical evidence seems to support the Coasean view and not the standard account of the GM-Fisher Body affair, both narratives neglect two crucial considerations: the reciprocal

⁵ See, e.g., Joel P. Trachtman, *The Theory of the Firm and the Theory of International Economic Organization*, 17 NW. J. INT’L. & BUS. 470, 521 (1997).

⁶ Benjamin Klein, Robert G. Crawford & Armen A. Alchian, *Vertical Integration, Appropriable Rents, and the Competitive Contracting Process*, 21 J.L. & ECON. 297 (1978).

⁷ See Benjamin Klein, *Contract Costs and Administered Prices: An Economic Theory of Rigid Wages*, 74 AM. ECON. ASSOC. PAPERS & PROC. 332 (1984); Benjamin Klein, *Vertical Integration as Organizational Ownership: The Fisher Body-General Motors Relationship Revisited*, in *THE NATURE OF THE FIRM: ORIGINS, EVOLUTION, AND DEVELOPMENT* 213-226 (Oliver Williamson and S. Winter eds., 1991); Benjamin Klein, *Hold-up problem*, in 2 *THE NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW* 241-244, (Peter K. Newman ed., 1998).

⁸ Coase (2006) *supra* note 4 at 255.

⁹ See, e.g., Robert F. Freeland, *Creating Holdup Through Vertical Integration: Fisher Body Revisited*, 43 J.L. & ECON. 33 (2000); See also Ramon Casadesus-Masanell & Daniel F. Spulber, *The Fable of Fisher Body*, 43 J.L. & ECON. 67 (2000); Yoshiro Miwa & J. Mark Ramseyer, *Rethinking Relationship Specific Investments: Subcontracting in the Japanese Automobile Industry*, 98 MICH. L. REV. 2636 (2000).

¹⁰ Coase (2006), *supra* note 4, at 277.

nature of contractual relations and the process of exchange, and the problem of historical observation. Coase's general critique of theory-driven work in economics is itself, ironically, largely non-empirical and theory-driven.

II. THE RECIPROCAL NATURE OF CONTRACTUAL RELATIONS AND CONTRACTUAL DISPUTES

What was the precise nature of the relationship between Fisher Body and General Motors? Where Klein sees conflict and opportunism at every turn, Coase sees cooperation and harmony. Their respective narratives of the Fisher Body affair differ. Nevertheless, both narratives do share one thing in common. They seem to take an extreme *either-or* approach to contractual relations—either such relations are cooperative or they are opportunistic in nature. While this approach is perhaps understandable, in reality contractual relations are essentially reciprocal in nature.¹¹

The parties to an exchange are by definition mutually dependent on each other. Any given contractual relationship is reciprocal in nature because *ex ante* each party needs the other in order to bring about the desired exchange. This reciprocal relationship—or mutual dependence—is especially acute in the case of long-term performance contracts, such as the one between Fisher Body and General Motors.¹² Each party is a hostage of the other during the performance period, and it is this mutual dependence or reciprocal relation that normally acts as a check against opportunistic behavior by either party.

From a purely theoretical perspective, the problem of post-contractual opportunism should be considered a reciprocal one. Each party has the potential of acting opportunistically towards the other, at least during the pre-performance stage. I shall call this the problem of *reciprocal opportunism*. In general, reciprocal opportunism will be checked and not spiral out of control if both parties follow what is called in game theory a *tit-for-tat* strategy.¹³ That is, either party will act opportunistically if, and only if, the other has engaged in opportunistic behavior first. In this sense, Coase is

¹¹ Professor Coase uses the phrase 'reciprocal in nature' to describe the problem of harmful effects – i.e., negative externalities, such as pollution, straying cattle, noise, etc. *See e.g.*, Ronald H. Coase, *The Federal Communications Commission*, 2 J.L. & ECON.1, 26 (1959) [hereinafter *Coase (1959)*]; *Coase (1960)*, *supra* note 1, at 2. In essence, Coase was the first economist to realize that the problem of harmful effects is a reciprocal one, an insight that can be extended to contractual relations, opportunism, and other problems as well. *See, e.g.*, F.E. Guerra-Pujol, *Ronald Coase: Philosopher* (unpublished manuscript, on file with the author).

¹² For readers not familiar with the Fisher Body literature, Fisher Body and GM had negotiated a 10-year supply contract in 1919 in which Fisher Body agreed to produce car bodies for GM's assembly plants.

¹³ *See, e.g.*, ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (1984).

correct to emphasize the exceptional nature of post-contractual opportunistic behavior in the real world.¹⁴

Nevertheless, the fact that post-contractual opportunistic behavior is rare does not indicate the absence of conflict. Conflict is inherent in the process of exchange precisely because of its reciprocal nature. The process of exchange is not a simple *either-or* proposition. Instead, exchange is better seen as a tangled mixture of cooperation and conflict. By cooperating, both parties to an exchange can obtain gains from trade, since they are better off cooperating than going their separate ways. A voluntary exchange will not take place unless both parties expect to be made better off from the exchange.¹⁵ But how will the parties divide the surplus between them? Each will want the largest share possible. It is this conflict of interest over the surplus that produces a certain amount of tension and conflict between the parties, for when it comes to dividing the surplus, one party's loss is the other's gain: "Each cooperative endeavour generates new resources and thus new areas of potential conflict."¹⁶ Though the idea of the reciprocal and inherently conflictive nature of cooperative exchange relations is perhaps novel in the context of industrial organization and contractual relations, this idea is amply supported by the literature on evolutionary biology and game theory.¹⁷

Likewise, disputes and conflicts of interest over unforeseen contingencies are also reciprocal in nature. Consider, for example, the 1925 dispute between Fisher Body and General Motors over the location of a proposed new body plant. Fisher Body was an independent supplier of car bodies. General Motors—which was in the business of assembling automobiles—could either produce its own car bodies or purchase them from an independent supplier, such as Fisher Body. Initially, GM chose the latter option. In 1919, GM and Fisher Body negotiated to a long-term, 10-year supply contract in which Fisher Body agreed to produce car bodies for GM's

¹⁴ See, e.g., Coase (2006), *supra* note 4, at 260.

¹⁵ See, e.g., RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 15 (6th ed., 2003).

¹⁶ See Helena Cronin, *The Battle of the Sexes Revisited*, in RICHARD DAWKINS: HOW A SCIENTIST CHANGED THE WAY WE THINK 16 (Alan Grafen & Mark Ridley editors, 2006); cf. JOHN MAYNARD-SMITH & EÖRS SZATHMÁRY, *THE ORIGINS OF LIFE* 146 (1999).

¹⁷ See generally, Dawkins, *supra* note 3; see also Robert L. Trivers, *Parent-Offspring Conflict*, 14 *Am. Zool.* 249 (1974). Put another way, if there is conflict even within the firm (see, e.g., Coase (2006), *supra* note 4, at 268, noting that holdups can also occur within the administrative structure of a firm), how much more severe must be the potential conflict between firms, who do not share the same administrative hierarchy. My apologies to Richard Dawkins: "If there is conflict of interest between parents and children [parent-offspring conflict], who share fifty per cent of each other's genes, how much more severe must be the conflict between mates, who are not related to each other" (Dawkins, *supra* note 3, at 140).

assembly plants.¹⁸ Then, in 1925, several years into the business relationship, GM wanted Fisher Body to build a new body plant in Flint, Michigan, while Fisher Body in contrast wanted to meet GM's excess demand by expanding its production of car bodies in Fisher Body's existing plant in Detroit.

Coase concedes that this was a *serious dispute*¹⁹ but claims that the clash over the body plant was a normal dispute that was settled amicably in a matter of months.²⁰ For his part, Klein sees Fisher Body's opposition to GM's proposal as opportunistic (holding-up) behavior.²¹ What Coase and Klein both fail to consider; however, is the reciprocal nature of the 1925 dispute. If the factory were built in Flint as GM wanted, this would have increased Fisher Body's production costs. On the other hand, if Fisher Body were to expand its existing factory in Detroit in place of building a new plant in Flint, this would have increased GM's costs. In either case, one side's loss would be the other's gain. Thus, without more information about the relative costs of each option, it is not at all clear which party is holding-up the other.

Coase, however, energetically objects at the possibility of Fisher Body holding up GM over the location of the body plant. At one point, he asks, "[a]re the coach passengers who resist the highwayman holding up the highwayman?"²² Perhaps this is meant as a rhetorical question, but in a purely intellectual sense the answer is affirmative, because the dispute between the coach passengers and the highwayman is reciprocal in nature, at least from an *ex ante* perspective.²³ Of course, one could argue that Coase's analogy is inappropriate, since the highwayman is attempting to realize an involuntary exchange (armed robbery).²⁴ But to a certain extent, the same can be said of both GM and Fisher Body with respect to the location of the body plant. Each party wants the other to bear the costs resulting from either

¹⁸ GM also purchased 60% of Fisher Body's stock at this time (1919). GM eventually purchased the remaining 40% of Fisher Body's shares in 1926, a year after the dispute between GM and the Fisher brothers over the location of the new body plant.

¹⁹ See Coase (2006), *supra* note 4, at 267, 270 (emphasis added).

²⁰ *Id.* at 271.

²¹ See Benjamin Klein, *Fisher-General Motors and the Nature of the Firm*, 43 J.L. & ECON. 105 (2000).

²² Coase (2006), *supra* note 4, at 270.

²³ This is not the place for me to get into the intricacies of the *ex ante* perspective of philosophy. My philosophical point is simply that we have no way of choosing between the highwayman or the passengers before legal entitlements are assigned to them, such as the entitlement to enjoy one's property or the entitlement to take another's property. See, e.g., Guido Calabresi & A. Douglas Melamud, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089 (1973).

²⁴ Though, for what it is worth, Coase himself once described the problem of blackmail (which can be viewed as either a voluntary or involuntary exchange) as reciprocal in nature. See Ronald H. Coase, *Blackmail*, 74 VIRG. L. REV. 655, 657 (1988).

course of action. On either view of the 1925 dispute—the Coasean view or Klein’s standard account—the problem remains reciprocal in nature.

In sum, even a mutually beneficial long-term relationship between a buyer and a seller will display elements of tension, discord, and manipulation, especially at the margin over the spoils of the joint venture. This is especially true when unforeseen contingencies occur. Whether this inherent tension between contracting parties will result in open opportunism or whether it will be checked by the parties’ mutual dependence will depend on a host of variables.²⁵ This latter question is beyond the scope of this paper. The main point here is that the process of exchange is reciprocal in nature. Ironically, it is worth noting that it was Ronald Coase himself who initially developed the idea of reciprocal relationships in the context of nuisance law.²⁶ In his now-classic paper, *The Problem of Social Cost*, Coase uses the prosaic example of factory smoke to illustrate the reciprocal relationship between the owner of a factory (who wishes to emit smoke) and the neighbors of the factory (who want clean air). Coase states that the traditional approach in nuisance law to the problem of the factory smoke (i.e., imposing legal liability on the party said to be causing the harm) is wrong. Coase’s analysis is so perceptive and original that it is worth quoting in full:

The traditional approach [to the problem of factory smoke] has tended to obscure the nature of the choice that has to be made [between A, the owner of the factory, and B, the neighbors]. The question is commonly thought of as one in which A inflicts harm on B and what has to be decided is, How should we restrain A? But this is wrong. We are dealing with a problem of a reciprocal nature. The real question that has to be decided is, Should A be allowed to harm B or should B be allowed to harm A? The [correct solution] is to avoid the more serious harm.²⁷

Coase is not just repeating the old saw that there are two sides to every story. His basic point is far more original and insightful than that. He is saying that one side to the dispute over the factory smoke will suffer ‘harmful

²⁵ See, e.g., Maynard-Smith & Szathmary, *supra* note 16; Axelrod, *supra* note 13.

²⁶ Coase (1959), *supra* note 11, at 26; Coase (1960), *supra* note 1, at 2. It is also worth noting that Guido Calabresi, while studying law at Yale, had independently reached the same conclusion as Ronald Coase did regarding the reciprocal nature of the externality problem (*reciprocity of causation*), but Calabresi made the *unfortunate* mistake of removing this point from his 1961 paper on risk distribution, his first published paper. See Guido Calabresi, *Neologisms Revisited*, 64 MD. L. REV. 736, 738 (2005).

²⁷ Coase (1960), *supra* note 1, at 2.

effects' no matter what the result is. For example, if the courts permit the owner of the factory to continue emitting smoke, the neighbors will be harmed. However, if the courts rule in favor of the neighbors, then the owner of the factory will be harmed.²⁸ One of the parties will suffer harmful effects however the dispute between them is resolved. Thus, in place of the traditional approach, the courts should balance (a) the cost to the neighbors caused by the emission of smoke versus (b) the cost to the factory owner and to consumers that will be caused by preventing the emission of smoke.²⁹

I have extended Coase's basic idea about reciprocal harms to the process of exchange. In summary, I have argued that contractual relations are reciprocal in nature since the parties are mutually dependent on each other and since the gains resulting from cooperation contain the seeds of conflict. Though this is something of a paradox, it helps to explain the radical divergence between Coase and Klein over how to interpret the relations between Fisher Body and General Motors. But putting aside for the moment the reciprocal nature of the *Fisher Body-GM* case, one must also contend with the thorny problem of historical observation.

III. THE PROBLEM OF HISTORICAL OBSERVATION (OR, WHAT IS A FACT?)

In his devastating and persuasive critique of the standard account of the *Fisher Body-GM* case, Coase goes on to make a larger and more interesting point about the nature of historical facts: "Facts are not like clay on the potter's wheel that can be molded to produce the desired result. They constitute the immutable material that we have to accept."³⁰ The analogy is a memorable one, but is it really that helpful? How does one distinguish fact from opinion (or fact from inference)? Put another way, how does one go about deciding who is telling the truth about a historical event, especially when the facts in question are composed of intangible and non-falsifiable

²⁸ In fact, it is not just the owner of the factory who will be harmed but rather all consumers who wish to purchase the products produced by the factory. Of course, the extent of the consumers' injury will depend in large part on the price elasticity of demand for the factory's products.

²⁹ In addition, Coase appears to be making a deeper philosophical point, implying that neither party to the factory-smoke dispute has an *ex ante* moral right to be free from harmful effects. For example, to say that the owner of the factory has a moral right to use the factors of production free from legal intervention is no answer because one could argue that the neighbors have a moral right to clean air or to good health. However we frame the problem—as one involving property rights in the factors of production or moral rights to good health—the essence of the problem remains reciprocal. Cf. F.E. Guerra-Pujol, *In Defense of Intellectual Agnosticism*, 65 REV. COL. ABOG. P.R. 55 (2004) [hereinafter *Guerra-Pujol (2004)*].

³⁰ Coase (2006), *supra* note 4, at 270.

historical events that occurred in the distant past? One is reminded of Pontius Pilate's immortal but inscrutable words during the trial and execution of Jesus: "What is truth?"³¹

I am not arguing that Coase got his facts wrong. I am, however, arguing that Coase's implicit theory of historical facts may be a bit too simplistic.³² Indeed, both the Coasean view and the standard account of the Fisher Body affair suffer from a kind of *historical dogmatism*. There are facts and then there are facts. A good many facts are no doubt fixed and immutable, as Coase puts it. One can, for instance, come to agreement on a host of basic facts regarding Fisher Body and General Motors: the fact that GM and Fisher Body negotiated a 10-year supply contract in 1919; the fact that the parties had a serious dispute in 1925; and the fact that GM acquired Fisher Body in 1926. These are hard facts. No one can deny them. Fair enough. But often, the significance of these hard facts will be open to debate and dialogue. That is, even if all the historical facts are clear and well-established, such facts can still be open to conflicting interpretations.³³ This problem appears to be inherent in all historical observation, and the main source of the problem is that one's knowledge of the past is necessarily *indirect* and thus non-falsifiable in the scientific sense:

[T]he historian is, by definition, absolutely incapable of observing the facts which he examines. No Egyptologist has ever seen Ramses. No expert on the Napoleonic Wars has ever heard the sound of the canon at Austerlitz. We can speak of earlier ages only through the accounts of eye-witnesses.³⁴

As a result, the reason why even hard historical facts can be open to interpretation is the fragmentary and incomplete nature of the historical record. As Bloch puts it: "we are in the predicament of a police magistrate who strives to reconstruct a crime he has not seen."³⁵ The events leading up to the acquisition of Fisher Body by General Motors are not immune to the problem of historical observation. This episode occurred almost a century

³¹ John 18:38.

³² Cf. Elodie Bertrand, *The Coasean Analysis of Lighthouse Financing: Myths and Realities*, 30 *CAMB. J. ECON.* 389 (2006).

³³ Cf. JONATHAN WEINER, *THE BEAK OF THE FINCH* 47 (1994): "Hard facts" are those rare details in this confusing world that have been recorded so clearly and unambiguously that everyone can agree on them. The shape of a finch's beak is a hard fact." Even so, the significance of this hard fact is open to differing interpretations, depending on whether you are a scientist or a preacher: either the shape of the beaks are various because of evolution by natural selection or because the Creator made them that way.

³⁴ Bloch, *supra* note 2, at 48.

³⁵ *Id.*

ago, and the principal actors in the events leading up to the merger – Alfred Sloan, the Fisher brothers, and their sundry lieutenants – have long since left this world. Our knowledge of the relations between Fisher Body and General Motors is necessarily indirect, circumstantial, and fragmentary, and thus a certain amount of interpretative wiggle room is unavoidable and inescapable.

Another related difficulty with historical facts is the problem of eyewitness testimony. In essence, the observer of historical events must ultimately rely on eye-witnesses for his information. In the words of Bloch, “[a] good half of all we see is seen through the eyes of others.”³⁶ And even when the eyewitness testimony consists of primary sources, such testimony may be incomplete or unreliable for a wide variety of reasons. Even first-hand accounts of an event are partial and limited. Again, the competing narratives of the *Fisher Body-GM* case are a fitting illustration of this problem. The relative paucity of eyewitness reports and documents of the relations between Fisher Body and General Motors is striking. Coase, for instance, refers in passing to only four primary sources: 1) the 1919 contract between Fisher Body and General Motors; 2) a memorandum recording a discussion with GM executives in 1922; 3) the 1926 Notice to Stockholders of the Fisher Body Corporation; and 4) a letter from Pierre du Pont to Fred Fisher.³⁷ No doubt one could easily draw a number of different inferences from such a limited number of sources.³⁸

Ironically, if anyone alive is intimately familiar with the facts of the *Fisher Body-GM* affair, a strong case can be made that it is Ronald Coase himself. For of all the economists who have written about the Fisher Body example, Coase is probably the only person alive to have personally interviewed executives of General Motors soon after GM had acquired Fisher Body.³⁹ But even Coase’s direct and first-hand knowledge of the Fisher Body affair is partial and imperfect. It appears that he never spoke with executives of Fisher Body. His visit to the United States occurred several years after the events in question. That is probably why even Coase has to rely mostly on secondary hearsay sources to reach his conclusions regarding the *Fisher Body-GM* case. By this, I do not wish to imply that Coase got his facts wrong. I

³⁶ *Id.* at 49

³⁷ See generally Coase (2006), *supra* note 4, at 256-272.

³⁸ The duPont letter, for example, documents a moment of severe tension in the relations between GM and the Fisher brothers, though as Coase notes, this strain occurred several years after the merger between GM and Fisher Body.

³⁹ As Coase has noted on various occasions, see, e.g., Ronald H. Coase, *The Nature of the Firm: Origins*, 4 J. ECON. MAN. 7 (1988); RONALD H. COASE, *The Institutional Structure of Production*, in *ESSAYS ON ECONOMICS AND ECONOMISTS* 7 (1994), he spent the academic year 1931-1932 in the United States on a Cassel Travel Scholarship, visiting automobile factories and personally interviewing business executives in the automobile industry.

merely wish to emphasize that even hard historical facts can be open to interpretation.

The 1925 dispute between Fisher Body and General Motors also serves as a good illustration of the problem of historical observation. How should one interpret this dispute and GM's subsequent decision to buy out the Fisher brothers? Certainly, the 1925 dispute was no minor matter. Even Coase recognizes that this quarrel rose to the level of a serious dispute.⁴⁰ The question is: was GM's proposal an attempt to hold-up Fisher Body—either you (Fisher) agree to build the new plant in Flint or we (GM) will not renew the 1919 contract—or was Fisher Body's opposition to GM's proposal an attempt to holdup GM? Or is Coase right? Was this just a normal (non-opportunistic) dispute between friends? All these interpretations are plausible, so we shall never know with a high degree of certainty which interpretation of the 1925 dispute is the correct one. All we can do is draw reasonable inferences. Historical events are by their very nature non-falsifiable and thus open to interpretation.

Both Coase and Klein "are in the predicament of a police magistrate who strives to reconstruct a crime he has not seen."⁴¹ This is so because the same set of hard historical facts can often be open to radically differing interpretations. One should thus distinguish between the past, which is fixed, and one's interpretation of the past, which can change over time.⁴² Of course, one person's interpretation may be more plausible than another's, but it is still an interpretation, not a fact *per se*. Coase himself seems to recognize this point when he states that "the important difference between Klein and me [is] due to a difference in our *perception* of the facts"⁴³ – all the more reason why historical dogmatism should be discarded out of hand.

Up to this point, my comments should perhaps be taken as the minor quibbles of a friendly academic.⁴⁴ At the end, however one looks at contractual relations or historical facts, Coase is correct: there appears to be little holding-up behavior in the relations of Fisher Body and General Motor. But Coase makes a major blunder towards the end of his paper. The most serious flaw of Coase's analysis has nothing to do with Fisher Body, but rather with his wholesale critique of the economics profession. Though Coase may be right in believing that economics has become theory-driven and non-

⁴⁰ Coase (2006), *supra* note 4, at 267-70.

⁴¹ Bloch, *supra* note 2, at 48.

⁴² See *id.*

⁴³ Coase (2006), *supra* note 4, at 262 (emphasis added).

⁴⁴ I say friendly because I admire the work of Ronald Coase very much, especially his 1974 paper on *The Market for Goods and the Market for Ideas*, in *ESSAYS ON ECONOMICS AND ECONOMISTS* 7 (1994); in addition, I consider myself a *Coasean* because of Coase's insight that most relationships are reciprocal in nature. See Guerra-Pujol (2004), *supra* note 29, at 59-63.

empirical, Coase's critique of the conduct of economics is itself largely theory-driven and non-empirical.

IV. COASE'S THEORY-DRIVEN CRITIQUE OF THEORY-DRIVEN ECONOMICS

I shall now devote my full attention to the last few all-important pages of Coase's 2006 paper, where he draws a number of sweeping generalizations from the *Fisher Body-GM* affair. Coase claims that economics has become a theory-driven subject and that this state of affairs has led to a very casual attitude toward checking the facts and a lack of interest in what actually happens.⁴⁵ But how empirical is Coase himself? The great irony in Coase's own critique of economics is that the Coasean critique itself appears to be largely theory-driven and casual towards the facts. In essence, Coase's theory is that economics is too theoretical. His hypothesis at least has the virtue of being testable. The problem, however, is that Coase makes no retense to test his theory. He simply assumes that it is true and thus commits the same fallacy he accuses other economists of.⁴⁶

Coase is not a naïve empiricist, in the mold of Francis Bacon. He is fully aware of the complex interplay between fact and theory. The problem is not that Coase is against theory *per se*. The problem is just the opposite. Coase is too theoretical and not empirical enough. He uses the Fisher Body episode to condemn the entire economics profession *carte blanche*, implying that theory-driven work in economics is typical of the economics profession. But on what grounds can one draw this inference? Instead of conducting a rigorous empirical review of the journal literature to test his hypothesis, Coase is content with a small handful of isolated examples—the usual suspects, to be sure—Samuelson, Meade, and of course, Pigou.⁴⁷ Frankly, Coase's anecdotal evidence is pretty feeble. In all, he is able to muster but three specific examples of theory-driven work in economics: lighthouses; the fable of the bees; and, of course, the Fisher Body affair. Yet, however egregious these errors may be, it is not at all clear whether these particular examples of error and sloppiness are representative of the majority of research in economics—or whether, in the alternative, these cases are mere aberrations or atypical instances. Coase himself has provided absolutely no

⁴⁵ Coase (2006), *supra* note 4, at 274-77.

⁴⁶ In fairness to Coase, I believe that the problem of theory-driven work is common to all mature sciences. See, e.g., Thomas S. Kuhn, *THE ESSENTIAL TENSION* 193 (1977). Consider, for example, Charles Darwin's influential theory of evolution by natural selection or Richard Dawkins's intriguing theory that 'memes' are the unit of cultural transmission or any other theoretical construct (such as game theory) that helps us to explain diverse natural phenomena. Thus, Coase is in pretty good company.

⁴⁷ Coase (2006), *supra* note 4, at 275-76.

reliable empirical evidence on this larger question. I am afraid that anecdotal evidence will not suffice.

Instead, Coase seems to assume the posture of a stern British schoolmaster, stating that “the investigations by the economics profession of the relations between Fisher Body and GM stand as a glaring example of how economic research should *not* be concluded.”⁴⁸ But even this bold claim is open to question. Even if Klein interpreted the facts wrong, one could still persuasively argue that this entire episode is actually a rather fitting tribute to the conduct of economics. After all, a number of scholars, working independently during the latter-half of the 1990s, were able to question the standard account, uncover new evidence, and present a more accurate account of the events leading to the GM-Fisher Body merger. As I see it, the very fact that these scholars were able set the record straight seems to vindicate the conduct of economics. Though Klein’s sloppiness created a false narrative of the holdup problem, Klein was not able to pull the wool over their eyes. The same can be said with respect to Coase’s other two glaring example of error: lighthouses and beekeeping.⁴⁹ Steven Cheung corrected Meade’s incorrect account of the relations between beekeepers and apple farmers,⁵⁰ while Coase did the same for lighthouses.⁵¹ Indeed, the very fact that these errors were eventually discovered and rectified by Coase, Cheung, and others suggests that these glaring examples (involving lighthouses and beekeeping) are isolated errors.

Furthermore, one could argue that there is an optimal rate of purely theory-driven work in any given scientific discipline. Most such theory-driven work is likely to be widely off the mark and ultimately discarded, while only a few theories are able to survive the test of time and lead to fruitful research.⁵² But so what? After all, why should the market for academic theories be any different from any other ordinary product market?⁵³ Likewise, perhaps there is even an optimal rate of error and sloppiness in any academic discipline as well. Perhaps one must be willing to

⁴⁸ *Id.* at 277. (emphasis added).

⁴⁹ See, e.g., Ronald H. Coase, *The Lighthouse in Economics*, 17 J.L. & ECON. 357 (1974) [hereinafter *Coase (1974)*]; Steven S. Cheung, *The Fable of the Bees*, 16 J.L. & ECON. 11 (1973).

⁵⁰ Cheung, *supra* note 49.

⁵¹ *Coase (1974)*, *supra* note 49.

⁵² Dawkins, *supra* note 3, at 325: “Some bad scientific ideas can spread widely, at least for a while. And some good ideas lie dormant for years before finally catching on ...” Though Dawkins had in mind W.D. Hamilton’s idea of kin selection as an example of a good idea taking time to catch on, Coase’s own idea that markets are not costless is an even more dramatic example of this phenomenon. See generally William Hamilton, *The Genetical Evolution of Social Behavior*, 7 J. THEOR. BIO., (1964) and Ronald H. Coase, *The Nature of the Firm*, 4 ECON. (1937).

⁵³ See George Stigler, MEMOIRS OF AN UNREGULATED ECONOMIST 170-74 (1988).

tolerate a large amount of error in order to discover and clutch those few kernels of truth that are so rare in this complex and confusing world. Whatever the case may be, and whatever the optimal rate of error—who would doubt the ruthless effectiveness of the marketplace of ideas in weeding-out error and false ideas? As I mentioned, the papers on the Fisher Body affair seem to bear this out. So my question to Coase is: why worry about a few bad apples?

Having said this, however, let me make it abundantly clear that I have neither quarreled with Coase's theory *per se*, nor with his professed desire to improve the conduct of economics. Coase's central message about the value of empirical work is well taken.⁵⁴ Instead of plucking examples out of thin air to illustrate one's theories, scholars should take the trouble to check their facts and get them right. For students of Coase, this theme will no doubt sound familiar. In his paper on the British lighthouse system, for instance, Coase the economist dons a historian's cap and meticulously reconstructs the historical record regarding the financing and operation of lighthouses in England and Wales.⁵⁵ Although Coase's historical analysis has recently been put to question, his larger point is an important one: economists should base their theories on empirical evidence rather than assume willy-nilly the facts into evidence, as a lawyer might say. What a pity that Coase should not do the same.

V. CONCLUSION

If one thing is clear about the Fisher Body affair, it is that Coase is quite put off by Klein's various accounts of the events leading up to GM's acquisition of Fisher Body. Whereas Klein depicts Fisher Body as the archetypical opportunistic supplier, Coase, in contrast, asserts that the opportunistic actions supposedly carried out by Fisher Body never happened. The dispute between Klein and Coase over the proper interpretation of the acquisition of Fisher Body by General Motors illustrates two important but neglected issues in economic research and social-science research generally: the reciprocal (conflictive and cooperative) nature of the

⁵⁴ Although I am an academic lawyer and not a formal economist, I must confess that Coase's message has had a profound impact on my way of looking at the world. Consider the problem of 'racial profiling', for example. Many of my colleagues believe that racial profiling is morally or legally wrong because it constitutes a form of racial discrimination. But the question of discrimination is beside the point, since the victims of crime are likewise mostly black and poor. The real question, as I see it, is whether racial profiling works. Does it reduce crime at the margin? Alas, a cursory glance at the legal literature shows that law professors do not seem to be interested in this more practical empirical question.

⁵⁵ Coase (1974), *supra* note 49.

process of exchange and the problem of historical observation. While Coase is right to point out the cooperative elements of the relations between Fisher Body and GM, one must not ignore or play down the conflictive elements as well, such as the 1925 dispute over the location of the body plant. One must also recognize the limitations of the historical record. Finally, whether Coase's larger critique of economics as a theory-driven subject is a correct one is a subject that requires further empirical investigation.