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An Essay in Honor of
Hans-Bernd Schäfer

Professor Hans-Bernd Schäfer of the University of Hamburg Faculty of Law has done as much as anyone alive to spread the learning of law and economics across Europe. His devotion to that task has been tireless. And his successes, both scholarly and administratively – most recently the designation of the Law and Economics Program as an Erasmus Mundus Program by the European Union – have been many. The occasion of Bernd’s moving to the next phase of his career seems an apt one to celebrate his contributions to legal scholarship generally and to law and economics particularly.

A. Prologue

Wine is one of the great pleasures of life. As a result, a great deal of time and effort goes into measuring its quality. Until relatively recently, discerning that quality was a job for experts or those with a great deal of experience. There was a great deal of mystery involved, so much so
that those with reputations as connoisseurs of wine quality sometimes cultivated a haughtiness for their abilities and a disdain for those who differed with them.¹

So, when a Princeton economics professor, Orley Ashenfelter, claimed to be able to predict the quality of Bordeaux wine using regression analysis, the experts treated the claim, at first, with polite curiosity. Professor Ashenfelter, a distinguished economist and a close student of wine, sought to discover the statistically significant factors that caused some vintages of Bordeaux to be considered great and others acceptable. To do so, he took as the dependent variable consensus opinions about the quality of a particular vintage of Bordeaux and then regressed many independent factors, such as those having to do with climate, onto the vintage-quality. Ashenfelter discovered that there were two factors that were most significant in explaining a great vintage: “low levels of harvest rain and high average summer temperatures.”² Using these results, Ashenfelter was (and is) able to predict, shortly after the harvest, the quality of the wine to come.³

Those who make their living advising the rest of us on the quality of wine did not think much of Ashenfelter’s results. One New York wine merchant described the critics’ reactions as “somewhere between violent and hysterical.” Robert Parker, publisher of The Wine Advocate and perhaps the leading traditional wine critic, called Ashenfelter an “absolute total sham.”⁴

Of course, the test of Ashenfelter’s model would be to see if it could accurately predict the quality of upcoming vintages and whether the model would do a better job than the “swish and spit” method of assessment. While the 1989 harvest was just three months in the cask, Ashenfelter predicted that it would the “wine of the century.” “[I]f the great 1961 Bordeaux were 100 [on Ashenfelter’s scale], then the 1989 Bordeaux were a whopping 149. [Ashenfelter] brazenly predicted that they would ‘sell for as high a price as any wine made in the last


² Here is a theory to explain this result. “Bordeaux are best when the grapes are ripe and their juice is concentrated. In years when the summer is particularly hot, grapes get ripe which lowers their acidity. And, in years when there is below-average rainfall, the fruit gets concentrated. So it’s in the hot and dry years that you tend to get the legendary vintages. Ripe grapes make supple (low-acid) wines. Concentrated grapes make full-bodied wines.” The equation that Ashenfelter estimated is this: \( \text{wine quality} = 12.145 + 0.00117 \text{winter rainfall} + 0.0614 \text{average growing season temperature} - 0.00386 \text{harvest rainfall} \). Ayres, supra n. 2, at 2. The dependent variable (wine quality) is measured as the “logarithm of average vintage price relative to 1961.” As will later be noted, at the time that Ashenfelter did the regressions, the 1961 Bordeaux vintage was thought to have been the greatest of the 20th century.

³ An extremely important part of Ashenfelter’s demonstration of the superiority of his method of predicting vintage wine prices is his showing that early prices for a vintage — those prevailing just after the harvest — are generally not a good predictor of the vintage wine’s price at maturity. See Ashenfelter, et al. (1995), supra n. 2.

⁴ Bordeaux and Burgundy wines typically spend between 18 months and two years in oak casks before being further aged in bottles. So, the ability to predict the quality of the vintage shortly after the harvest and years before the wine is sold at retail is, if accurate, extremely valuable.

⁵ Yres, supra n. 2, at 3.