

Introduction to Law and Economics

An Overview

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Distinctions and the Common Core

Law & Economics may be divided into three related (positive and normative) exercises:

- (1) The use of economic methodology (-ies?) for explaining the functions of existing legal rules and legal decision making
- (2) A joint research effort of lawyers and economists for exploring the preconditions, mechanisms and effects of institutional choice
- (3) An educational program for promoting a productive dialogue between the two dominating social sciences, law and economics, for developing state-of-the art solutions for complex socio-economic problems.



Distinctions and the Common Core

Ejan Mackaay (2002):

[The approach] "explicitly considers legal institutions not as given outside the economic system, but as variables within it, and looks at the effects of changing one or the other elements of the system. In the economic analysis of law, legal institutions are treated not as fixed outside the economic system, but belonging to the choices to be explained."



Distinctions and the Common Core

Chicago 1997 (Baird, Becker, Coase, Posner and Epstein):

“original simplicity accounted for the huge success of the movement”

Four core notions:

1. people maximize
2. markets clear
3. the moves make parties better off (“efficiency”)
4. institutional choice matters



Distinctions and the Common Core

Using the basic paradigm of assuming hypothetical ex-ante bargains between self-interested individual actors provides substantial insights in the functioning and possible design of legal rules

- bottom-line, Richard Posner (1972)

Own proposition:

L & E can be best understood as a *Janus-headed* phenomenon:

It looks at both disciplines, and makes an impact on both.
There is L & E in economics, and there is L & E in law



L&E in Economics

Today L & E is a standard subject of the economic curriculum

New developments:

- better understanding of information in markets and organizations
- theoretical development of contract and agency theory
- experimental and theoretical exploration of individual and group decision making by economic psychology
- experimental economics and game theory





L&E in Law Schools: The Case for Cooperation

How did L & E take on in the law schools?

Did it matter for the development of law?

What are the achievements and what are the chances of integrating institutional analysis in legal reasoning?

- (1) Necessity of cooperation and communication
- (2) Value creation by professional specialization and interaction
- (3) Need for ambassadorial services





L&E in Law Schools: The Case for Cooperation

Darwinian reality of **specificity**: of the immediate subjects, their problems, the associated working environment, the routines, training, and professional history

Advantage of L & E: Judge Richard Posner and Econometrist Jean Tirole can communicate with each other

L & E today is an international approach working with the same literature and within the paradigm found at US law schools



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Applications

- Torts:
trick “hypothetical bargain”
- Contracts:
specific feature “efficient breach” – formulation of default rules
- Corporations:
“nature of the firm”, explanation of limited liability



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Applications: Antitrust (Rubinfeld)

- Antitrust is the “classical” area in which Law&Ecs developed
- Famous Chicago course jointly taught by Ed Levi and Aaron Director in the 50’s
- Paradigmatic texts:

George Stigler, A Theory of Oligopoly, JPE 1964

Harold Demsetz, Two Systems of Belief About Monopoly
1974 (paper)

Richard A. Posner, Antitrust Law 1976

Robert Bork, The Antitrust Paradox 1978

Oliver Williamson, Markets and Hierarchies 1975





Slutt