
Introduction

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This book, I am told, needs an introduction. I therefore hasten to supply a guide to the reader who may find the volume difficult to read, and who has to be prepared for a journey through the most varied and partly inhospitable terrain, in which the ultimate goal and purpose of every single step can hardly be clear to him at every moment (Steindl, 1952, p. v).

The purpose of the *Companion* is to provide a reference work for the active researcher in law and economics. In so doing, care has been taken to avoid a possible overlap with other works in the field. In particular, the *Companion* does not intend to duplicate the ambitious *New Palgrave*, which aims to balance its pointedly formal focus by emphasizing institutional economics (Newman, 1998). The comprehensive set of chapters in the *Companion*, mainly in the Chicago tradition of law and economics (Posner and Parisi, 1997), allows us to focus on other mainly European aspects of law and economics and the historical sources of law and economics research, which explains its structure (Bouckaert and de Geest, 1999).

The *Companion* has not only been updated and revised for its second edition, but has also been substantially amended. Parts I–VIII cover the main areas of law and economics, including basic issues as well as different sources of the law, while Part IX offers 26 scholarly biographies of the key figures involved. These biographies have been written with a view to encouraging further research into neglected areas in the field which have been taken up at some point but are not part of the current scholarly discussion in law and economics.

Roots

Law and economics has its roots in those natural law philosophies, such as Christian Wolff's (1740), from which they developed as separate disciplines. For Wolff, for instance, applying an economic analytical argument to a legal question was still a standard approach. Only after the disciplines had gone their separate ways would it seem natural for an economic problem to be met with an economic analytical tool, and a legal problem with the proper legal analytical tools. The possibility that a legal problem might be tackled using an economic approach is novel and obviously requires the separation of the two disciplines. However, although genuinely innovative, the practice has been a long-standing one, for example, see authors such as Henri Storch, Wilhelm Roscher, Adolph

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Wagner and Gustav von Schmoller, or Rudolf von Jhering, who, with his emphasis on the *purpose* of the law, clearly adopts an economically inspired approach to organizing an entire dogmatic civil legal system.

Still on the European continent, the extensive codifications which took place mainly during the nineteenth century were partly fuelled by economic analytical arguments. Oddly enough, the Englishman Jeremy Bentham was most influential outside his home country, as his explicit legal economic analysis leading towards not only codifications but also specific problem solutions to well-defined policy puzzles form early masterpieces of successful legal economic analysis. One can generalize by saying that continental economics had a strong law and economics undercurrent until the early 1930s (Backhaus, 1987). For instance, the name of the leading journal in economics in the German language area was *Annals of Legislation, Administration and Political Economy*. Hence, legislation and administration were clearly seen as the economic policy areas most likely to be used.

This particular European tradition was transported to America, and here the early institutionalist scholars continued a brand of economics which merged seamlessly with what we now understand as the old law and economics, when attempts to regulate market forces required economic analysis as inputs into administrative and judicial decisions.

Chicago, Yale, Virginia et al.

A totally different picture emerged after the Second World War, partly evolving from these continental roots, but facing a different challenge altogether. Economics had now developed into a science focusing on human decisions under constraints, and it was these constraints that required specific attention, since many of them arguably could be defined as being part of the law. The University of Chicago, with its many emigrant scholars, started to pioneer a new law and economics approach leading to the seminal work of Aaron Director, Ronald Coase, George Stigler, Richard Posner and Frank Easterbrook, to name but a few, which can be characterized as the distinct insertion of an economic analytical skeleton into legal dogmatics, just as the earlier writers had done on the European continent, witness Jhering or Otto von Gierke. However, these writers had to deal with a mass of amorphous case law, not codified law, and this made the task of seeking an organizing theoretical analytical framework a much more urgent one. In this these scholars excelled and, most notably, Richard Posner rendered the entire body of private law, and later all the other relevant bodies of law, including constitutional, administrative, and penal law, into one well-organized system, whose dogmatic structure is clearly borrowed from price theory.

But other schools did not remain on the sidelines. At Yale, a different approach was taken, with a more activist agenda being adopted. Here we

think of Guido Calabresi's classic, *The Cost of Accidents* (1970), which analyses the problem of how a legal system has to formulate policies that minimize the (necessary) cost of accidents in a modern society, when it is well understood that modern technologies will be adopted and cannot be rejected. In the same vein, Calabresi continued with his *Tragic Choices* (Guido and Bobbitt, 1978), while Susan Rose Ackerman (1992) explicitly started to reconsider the progressive agenda from a law and economics point of view.

Very different from this political bent is the Virginia School in Law and Economics in modern America, with the important contributions by Gordon Tullock on basic issues of the law from the law and economics point of view (including public choice considerations) (see, for example, Tullock 1971 and 1980), James Buchanan's constitutional approach to public choice, and the numerous studies that the public choice camp has produced on the impact of the regulatory state on economic activity, including the substantial costs of this regulatory activity; witness the theory of rent seeking pioneered by Tullock.

These different new approaches to the new economic analysis of law have found their publishing outlets in five leading journals in the field. The University of Chicago publishes the *Journal of Law and Economics* and the *Journal of Legal Studies*. Closer to the Yale approach is the *Journal of Law, Economics and Organization*. A more formal approach is taken by the *International Review of Law and Economics* and applied issues, particularly in a European context, are the focus of the *European Journal of Law and Economics*.

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