Preface

Economic methodology has been gaining increasing attention in legal studies over the last few decades – for a while now in the Anglo-American discourse, and more recently also in continental Europe. Arguments based on economic thinking were first advanced in private law and then in other areas of law as well. Nowadays, nobody is surprised anymore to read of ‘incentives’ or ‘actors’ in a legal text, or – more recently – of ‘nudges’. There is hardly a treatise on torts which does not contain reflections on the best insurability; in the field of emissions trading law, EU law specialists discuss the first allocation of certificates; and criminal law experts debate whether increasing the chances of detecting crimes would have a stronger deterrent effect than the mere increasing of sentences. Further prominent examples could be named for a whole string of legal areas, ranging from medical liability and intellectual property rights to tax and environmental law as well as antitrust and consumer protection law. In comparative law, economic theory is frequently used as a *tertium comparationis*, a standard of comparison. While law and economics in the initial stages primarily dealt with theoretical models, in recent times empirical findings have also increasingly been making their way into legal studies.

There is also a growing demand for legal scholars to justify legislation (already in force or about to be implemented) on the basis of evidence on human behavior – for example, from politics or neighboring disciplines. Is an intended legal measure really suited to fulfill its goal? Legal practitioners are thus increasingly compelled to assure themselves of the fundamentals of their own discipline. In order not to lose their clout to have a strong impact on society, they must become experts for behavioral interventions through law. Law and economics provides a suitable framework for this, in particular, if evidence from the behavioral sciences is taken into account.

These developments also mean there is an increasing demand for knowledge of social science methodology in general and of economics in particular to be passed on. How does one find access to this mode of thinking? What limitations have to be taken into account when introducing an economic argument into the legal discourse? How do we recognize a good, economically sound argument, and how can we debunk a poor one? And

finally, how can we learn to make a valid economic argument ourselves? This textbook is an attempt to answer these questions. It addresses readers who are familiar with legal studies, yet have no previous knowledge of the social sciences, and who wish to become familiar with economic methods and to understand the appeal and the power of an economic argument in select legal contexts. The major areas of economic theory are briefly introduced, as far as they are relevant for legal studies. Furthermore, the book will give an overview of the empirical fundamentals of the social sciences, and of more recent approaches relating to behavioral theory.

Therefore, the book differs in its approach from conventional textbooks on law and economics. The idea is not to study certain legal areas through the lens of economic theory. First and foremost, it is about imparting information on methods rather than certain content-related theories. The book does not outline how specific economic insights should be understood in a legal context. Rather, it intends to be an aid to understanding economic arguments better and applying them to legal issues. Obviously, this textbook cannot do entirely without content-related knowledge, so that short introductions to some basic theoretical concepts of economics are provided – from microeconomics to public goods and public choice. Despite this emphasis on methods, the authors have gone to great lengths to show the importance of their remarks for legal studies, using examples from many of the different legal fields.

This textbook presents the basic economic models, since this project is about introducing economic methods to legal experts. In economics, too, as in jurisprudence, many of the assumptions and conclusions presented here without second-guessing are the subject of heated debate. Every topic presented in this volume is open to a host of theoretical and empirical variations and refinements – indeed, these are too numerous to reference them in their entirety. Interested readers are advised to refer to more specialized literature, which usually contains more refined models. References are provided at the end of each chapter, and the footnotes contain further references for specific questions.

The authors of the individual chapters are experts in their respective fields. However, the primary authors had the ambition to produce not an anthology of economic methodology, but rather a self-contained textbook. The concept and final harmonization are the work of the two primary authors. They revised all contributions in order to avoid overlaps and to ensure coherence and a consistent style. The book is based on the experience of a German language textbook; Stefan Voigt and Patrick Leyens from the Institute of Law and Economics at Hamburg University urged us to write an English language textbook according to the same concept, bridging a gap for ‘black-letter law’ trained lawyers into social science

methods. Special thanks go to Brian Cooper for his thorough linguistic review of the individual contributions, to Rebekka Herberg for the final editing of the manuscript, and to Tara Gorvine, Erin McVicar, Claire Greenwell and David Fairclough at Edward Elgar for the professional and helpful handling of the publishing process.

We hope this book will be well received and are always grateful for ideas for improvement.

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