Introduction

Jürgen G. Backhaus

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.¹

The purpose of this companion is to provide a reference work for the active researcher in law and economics. In composing this companion, care has been taken to avoid a possible overlap with other works in the field. In particular, this work does not aim at duplicating the ambitious *New Palgrave in Law and Economics*, which aims to balance the pointedly formal focus of the *New Palgrave* by emphasizing institutional economics.² A comprehensive set of articles, mainly in the Chicago tradition of law and economics,³ allows us to focus on other mainly European aspects of law and economics and the historical sources of law and economics research. This explains the structure of the *Companion*.⁴

The *Companion* falls into two parts, the first of which covers main areas of law and economics, including basic issues as well as different sources of the law, while the second offers twenty-six scholarly biographies of main figures in law and economics. These biographies have been written with a view to allowing 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, from which grew both the disciplines of law and economics 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 parted 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 attacked with an economic approach is novel and obviously requires the separation of the two disciplines. However, although genuinely novel, the practice has been a long-standing one. We can think of authors such as Storch, Roscher, Wagner, Schmoller or 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 large codifications which took place mainly during the 19th century were partly fuelled by economic analytical arguments. Oddly enough, Jeremy Bentham of the British Isles had most of his influence 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 all the way until the early 1930s. 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 venues for economic policy most likely to be used.

This particular tradition from the European continent was transported to the American continent, and here the early institutionalist scholars continued a brand of economics which easily merged with what we now understand as the old law and economics, when regulatory efforts at market forces required economic analysis as inputs into administrative and judicial decisions.

Chicago, Yale, Virginia *et al.*

A totally different picture emerged essentially after World War II, partly from these continental roots, but facing a different challenge altogether. Economics had now developed into the science focusing on human decisions under constraints, and it was these constraints that required specific attention, when 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, just to name 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 the same on the European continent, witness Jhering or 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 was able to render, originally, the entire body of private law, and later all the other relevant bodies of law, including constitutional law and administrative law as well as penal law, in one well-organized dogmatic 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 Calabresi's classic, *The Cost of Accidents*, which analyses the problem of how a legal system has to look at policies that minimize the (necessary) costs of accidents in a modern society, when it is well understood that the modern technologies will be adopted and cannot be rejected. In the same vein, Calabresi continued with his 'Tragic Choices', while Susan Rose Ackerman explicitly started to reconsider the progressive agenda from a law and economics point of view.

Very different from this political bent there stands 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), Buchanan's constitutional approach to public choice, and the numerous studies 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 Gordon 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*.

Notes

1. Joseph Steindl, *Maturity and Stagnation in American Capitalism*, Oxford: Basil Blackwell, 1952, p. v.
2. Peter Newman (ed.), *The New Palgrave in Law and Economics*, London: Macmillan/New York: Stockton, 1998.
3. Richard E. Posner and Francesco Parisi, *Law and Economics*, I–III, Cheltenham: Edward Elgar, 1997.
4. See also Boudewijn Bouckaert and Gerrit de Geest (eds), *Encyclopedia of Law and Economics*, Cheltenham: Edward Elgar, forthcoming.

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4 *The Elgar companion to law and economics*

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