ISSN 1022-4057

Português

English

Español

Economic Analysis of Law Review

abde
Associação Brasileira de Direito e Economia

Universidade Católica de Brasília

Editora Universa

www.ealr.com.br

EALR, V. 1, nº 1, p. 1-3, Jan-Jun, 2010

Economic Analysis of Law Review

Editorial

The Flight of the Beetle

Ivo T. Gico Jr.
Catholic University of Brasília
Law Department

Gilson G. da Silva Jr.
Catholic University of Brasília
Economics Department

Beetles are nothing more than sheathes (*koleos*) with wings (*pteron*) or simply put coleopterons. They were not supposed to fly. The abdomen is too big; the rigid carapace is too heavy; the wings are tiny and fragile; while their brains seem too small and primitive to coordinate the sophisticated activities related to flying. It goes without saying that common sense would not have them flying at all. However, the beetle does not know all that and, awkwardly enough, it flies. The Economic Analysis of Law or Law & Economics tradition is just like the beetle. It aggregates a number of characteristics that look irreconcilable at first, but again challenging common sense, they are not. It is precisely this juxtaposition of unusual elements that generate the discomfort normally felt by new comers when they are first exposed to a juseconomics analysis.

To embrace a juseconomist approach is to employ the scientific methods of analysis tested with success by the science of Economics and correlated ones, like Sociology, Psychology, Political Science or even Medicine, Mathematics and Evolutionary Biology to understand and explain legal phenomena. Law & Economics is an answer to the *ipse dixit* posture that has spread in many countries and induces scholars into leaps of faith based on nothing more than suppositions or conjectures, that is, without any analysis minimally informed about the facts involved or the probable consequences of a given legal rule. In a way, L&E is a return to the great theories of knowledge tradition according to which every phenomenon is many-sided and real comprehension requires an adequate understanding of all of them.

The juseconomist approaches the legal phenomenon as any scientist approaches a problem. S/he always tries to differentiate between the positive and normative aspects of the issue. For example, on one hand, the identification and the survival probability of an anencephalic fetus is a scientific inquiry, ergo, a positive issue (what is). On the other hand, the desirability of allowing abortion in these cases is dependable on the predominant values of a given society in a given time period, hence, it is a normative issue (what should be). In this sense, each and every legal issue necessarily involves a positive (fact) and a normative (value) facet. As a result, it is not only useful, but also necessary that all social scientist know how to distinguish one from the other, if not from an epistemological point of view, at least from an operational perspective.

Law & Economic practitioners in general are worried about answering two basic questions: (i) what are the consequences of the law, that is, of a given rule; and (ii) what should the law be. Most of us would agree that the answer to the first question is completely independent of the answer to the second question, but the reverse is not true. In order to know what the law should be we need to know the consequences of the rule we are currently considering. The first line of research is normally called Positive Law & Economics (what is), while the second one is called Normative Law & Economics (what should be).

In the quest for an improved understanding of the law, juseconomists employ theoretical models that simplify reality in an attempt to better focus on the main issues that really matter to their analysis and do so by discarding the secondary aspects. As all scientific theory, this approach requires a simplification of reality and this feature may wrongly induce some to think that L&E is reductionist. In fact, just as the simple brain of the beetle is capable of processing the miraculous feature of coordinating flight, the Law & Economics theory, notwithstanding some of its relatively simple aspects, is capable of illuminating many complex issues that were covered up by secondary aspects before. In addition to that, by focusing on rationality and the structural elements of each legal issue, L&E reviews something that has been hidden from most scholars, that is, the possibility of logical integrity in a modern legal system. In other words, L&E provides a theoretical framework that is capable of unifying all areas of law, an important accomplishment on its own and that is normally incompatible with traditional approaches.

In this line of thought, the Economic Analysis of Law not only allows for effective means to provide diagnosis and prognoses about legal issues, but also energetically fight against the subjectivism and the nihilism in legal academy that, many times, makes law looks more like a Rorschach test than actual social ordering. Obviously, such a critical approach has caused a lot of buzz at the establishment, but most opponents do produce much more noise than dialogue with the discipline. Just like the beetle's flight produces a disturbing noise that may interfere with the observer capability of perceiving the miracle of the flight itself, communication noise caused by lack of knowledge or ignorance may as well make it difficult to perceive what Law & Economics is about. The Economic Analysis of Law Review – EALR was created exactly to reduce this communication noise and, by doing so, to bring closer the various scientific communities. The EARL was created as a modern vehicle to disseminate theoretical and empirical studies that address old and new legal issues trough innovative perspectives. It is a wide range publication both from a methodology and object of study perspective. The work published here explores unforeseen aspects of legal questions by employing traditional disciplines of Economics like Microeconomics, Public Choice Theory, Game Theory, Econometrics, more recent approaches like Behavioral Economics, in addition to other scientific approaches like Sociology and Evolutionary Biology.

The EARL was conceived on the firm conviction that the economic approach to law is becoming more and more relevant in identifying and solving important legal issues and that it is important to get both legal scholars and other social scientists close together to dialogue. With this objective in mind and considering that L&E is applicable to highly distinct social, political and economical contexts, the EALR was born multilingual. It accepts and publishes work in Portuguese, Spanish and English. We hope that this investigative and linguistic flexibility works to catalyze the dialogue between different areas in the attempt to better comprehend important social-legal phenomena.

It is precisely because of EARL's knowledge mixing objective that the Rosetta Stone was chosen to illustrate our first edition. The Rosetta Stone was found by Napoleon's troops by sheer luck and many of those who look at it at first believe it to be only a beautiful black granite rock with some interesting carvings. However, in reality, this unique stone possess texts in hieroglyphic and demotic Egyptian, as well as classic Greek. These languages are very different and to an unwarned observer they may have no connection with each other whatsoever. Notwithstanding, when duly combined, these distinct and apparently isolated languages reveal the key to the knowledge required to unlock a whole new world that was completely lost until then.

The Economic Analysis of Law is also like the Rosetta Stone. It combines bodies of knowledge and languages very distinct that, until then, resembled completely different and connectionless. Nevertheless, when duly combined by those who do not fear the new or the unknown, they become a very powerful instrument to interpret, understand and operate legal issues in an entirely new form. For example, our first number presents papers that deal with property, contract, torts, social choices, criminal law, constitutional law and taxation all using the L&E approach and bearing innovative perspectives. We even have a paper that uses software to simulate the world of car theft in order to better understand criminality and assess the relevant variables. We all hope that this number becomes only the beginning of a long journey and that social scientists, students, researches and professionals at large from all areas become more acquainted with the possibilities that Law & Economics has to offer through the EALR.

Our mission is to reduce the costs associated with the combination of these different bodies of knowledge and, by doing so, fostering the dialogue between scientists of many areas. We do this because we believe that it is time again to reunite partial truths in the search of global revelations. Just like the beetle can be a (biological) vector, the EARL is intended to transmit ideas that will bother like the beetle's buzz and provoke diverse and adverse reactions, hence, to create movement in the multidimensional law-economics space. For we believe it is time to go beyond our past generations, although without forgetting their achievements, since we must never forget that we are always learning. *Doctrina Perpetua*!

Brasília, May 14th, 2010.

ITG and GGS