

ECONOMIC SOCIOLOGY OF LAW

Class activities*

Class 1 Jan 9: Sociology of Law

Sociology of Law

- What is Sociology of Law?
- What is the purpose of Sociology of Law?
- What is the method of Sociology of Law?
- Both Law as a discipline and Sociology of Law study norms (legal rules). What are the difference and similarities, if any, in the way both disciplines approach the study of norms?
- What else does Sociology of Law study?

Class 2 Jan. 16: Law and Economics and Economic Sociology of Law

Read this article and discuss the following questions

- 1) What is the article about?
- 2) How can Economic Sociology of Law explain the recommendations of the Auditor General?
- 3) What is the role of ideas in the recommendation?
- 4) Do you agree with the main recommendation? Why or why not?
- 5) What can be the implications of this recommendation? For students? Faculty? Sault Ste. Marie?

Algoma U needs to look at profitability of its programs: report

New report by Ontario's Auditor General recommends that Algoma University look into how programs contribute financially, and downsize its 18-member board of governors

James Hopkin James Hopkin

Part of that assessment should also include a determination on whether there are programs at Algoma that could be reduced or restructured, Lysk says in the report entitled Value-for-Money Audit: Financial Management in Ontario Universities, which looks at operations and governance structures in four universities.

The 113-page report states that Algoma University completed an analysis of the profitability of academic departments for the 2020-2021 academic year, but only as a one-time exercise.

“The analysis was done at the department level (not at the program level) and took into consideration tuition revenue and cost of instruction for each student enrolled in each specific department. However, the analysis did not take into consideration any other related costs such as for physical space, administration or maintenance. Therefore, a more comprehensive assessment of profitability was not available,” reads an excerpt from the Auditor General’s report. “The analysis that was performed did not look at each of the Sault Ste. Marie, Timmins and Brampton campuses’ performance separately.”

Ontario’s Auditor General has made a handful of recommendations to the university in order to have a clearer picture of the financial contributions of its programming:

complete an analysis of profitability at the academic program level;

determine whether there are programs that can be reduced or restructured to provide a better financial contribution to the university while still retaining overall academic credibility with department course offerings;

reduce or restructure program offerings based on the results of its program profitability analysis and academic need, in consultation with its academic departments and with the approval of its board and senate.

“To enable the senate at Algoma University to make well-informed decisions with regard to academic programming, and that consider the financial sustainability of the university, we recommend that the senate be provided with regular costing information on the financial contribution of individual program offerings, by campus and the university as a whole,” the report reads.

Speaking with SooToday Monday, Algoma University President Asima Vezina says the university is working with some of its departments, including social work, psychology and sociology in order to assess the marketability of their programs, much like what the university did previously with business, computer science and health sciences, to build new programs while enhancing pre-existing ones.

“We saw great success. We had programs that doubled and tripled their enrolment,” said Vezina. “So, I think we’re ready to take another group of programs on to really invest and work with the faculty, who are very keen to really think about what will attract students into their programs.”

The president says her university is in the process of moving towards what’s known as a responsibility centred management (RCM) budget model that will ensure the profitability of its programs, but notes that some courses, particularly Indigenous courses and arts programming, will be protected by the university even if they're not necessarily money makers.

“It allows you to really take a close look at all of the indicators within a program and see where the costs are and the revenues, and then to make informed decisions as you move forward,” Vezina said of the RCM budget model. “But at this point, we are not talking about a reduction in programs.

“What we’re really looking at is a re-stimulation and really ensuring all our programs are really speaking to enrolment — and if they’re not, there are programs that we may run at a deficit and will do that because they’re very important to the overall university experience and our special mission.”

The Auditor General’s report also recommended that Algoma present its board of governors with the university’s “projected cash flows from operations, financing and capital purchasing activities to inform the board on the impact of each activity on the university’s resources.”

Vezina says Algoma University has been busy revising and adding policies around financial management that will satisfy that recommendation.

“We brought new technologies in, and so that recommendation will actually be in place probably within the next four to six months, if not sooner,” she said. “We think it’s good. We think it’s very positive, and we were already in the process of doing it.”

Board needs to be big on financial literacy but smaller in size, report says

The Auditor General also wants to see Algoma's 18-member board of governors, its five related committees and two subcommittees all scaled back in size in the name of efficiency.

"I think we all know that in terms of best practice in governance that boards that are huge are not always as effective as they might be," Vezina conceded.

The report goes on to note that half of Algoma University's board has "limited or no competency in the area of finance, and 44 per cent had little or no experience in accounting."

"Because boards are responsible for overseeing universities' financial operations including reviewing and approving operating budgets, capital expenditures, debt/financing, and financial statements, the majority or near-to-all board members should be financially literate at least to the extent they understand university finances and have the ability to read and understand university financial statements, either at the time of appointment or through training within a year of appointment," reads an excerpt from the report.

Vezina says the board has "some very strong finance people," with certified accountants and people working in leadership positions in finance within its ranks.

"We've got a lot of talent on the board, but what the auditor is recommending coming out of Laurentian's audit is that boards actually make up a much higher percentage of financially literate board members," she said.

Ultimately, the president says it's "good news" that Algoma University has been noted by the Auditor General for being a "sustainable organization" overall.

"We're in a very different place than we were five years ago, and I think we should be very proud of this university and what it's accomplishing — and we'll continue to work with these kinds of recommendations because they'll only make us better," Vezina said of the report.

Economic Sociology of Law

- What is Economic Sociology of Law?
- What does it study?
- What is Sociology of the Market?
- How do political institutions shape markets?
- How do economic models shape markets?
- Adam Smith argued that if nations have similar market traits it is because universal economic laws drive them to adopt identical institutions. Discuss this statement. What does Economic Sociology of Law prove about Adam Smith's thesis?

Read Paul Rubin's article and discuss the following questions

- What is Law and Economics?
- What is efficiency? Give examples.
- What is the emphasis on incentives? Give examples.
- What is Law and Economics premised upon? Are these premises valid? Why or why not?
- What is Law and Economics scholars' approach to the regulation of the Economy?
- Read Paul Rubin's article and briefly summarize his examples of how Law and Economics approaches the regulation of Torts, Criminal Law, Property, and Contracts.

Class 3 Jan. 23 Legal regulation of the market

- What is the market?
- What are the instruments used to regulate the market?
- Why do states regulate the market?
- What are the pros and cons of market regulation?
- Has technological innovation impacted traditional approaches to market regulation? If so, how?
- Choose an industry, an economic sector, or an activity and a country and give examples of how that country regulates that industry, sector, or activity.

Read Schleifer's article entitled Understanding Regulation and discuss the following

questions

- Is regulation generally a good idea, as the positive correlation between its growth and the growth of income seems to indicate, or has it been an obstacle to economic and social progress?
- Have the USA and Western Europe grown in spite of it?
- How much regulation of a particular activity is appropriate?
- Does the nature of the activity being regulated, or the characteristics of a country, influence the optimal choice?
- Is the level of regulation we observe in fact an outcome of efficient social choice, or are other factors as or more important?
- Discuss the three theories of regulation. Give examples of how these theories work in practice.

Read the following text and do an online search of *lex mercatoria* (law merchant).

Summarize its concept, origin, and main characteristics.

National institutions determine the “property rights,” or rules of economic exchange, that shape market behavior. This is true everywhere. What is interesting about the core property rights that govern most countries today is that they stem from a common set of international rules formed at a time when modern nation-states were just emerging. If domestic political institutions determine the differences in national markets, as Perrow and Gao argue, international political institutions determine many of the commonalities among markets across nations. This insight challenges Adam Smith’s view that if nations have similar market traits it is because universal economic laws drive them to adopt identical institutions. Swedberg suggests that Western nation-states copied their economic regulations from the same place. Swedberg argues that legal institutions are not well theorized by the law-and-economics paradigm that now dominates legal scholarship and that a more sociological understanding of how law shapes ongoing economic behavior is needed. Building on one of Weber’s insights about the historical emergence of commercial institutions, he shows the utility of that insight today. The common commercial laws that emerged in Europe were based on the *lex mercatoria*—these were the rules of the “law merchants” who regulated commercial relations before a systematic order of commercial regulations had emerged among nascent states. Merchant markets established courts that heard cases and developed a sort of

common law of market exchange that still serves as the foundation of commercial transactions. It included such principles as acquisition in good faith overriding original ownership, the economic corporation being a legal entity, and symbolic delivery through contract replacing the actual transfer of goods. It included such institutions as patents and trademarks, the bond, the modern mortgage, and the bill of lading. The commercial regulations that are common to modern countries, then, took parallel forms not because they arose, *sui generis*, as the most efficient forms of commercial regulation, but because they had a common historical source. The old *lex mercatoria* shaped political institutions and thereby shaped modern thinking about property, inheritance, the contract, and the corporation as a legal person.



Class 4 Jan. 30: Legal regulation and the news

Do an online search of current news dealing with the legal regulation of the economy. Summarize the articles and critically analyze them.



Class 5 Feb. 6: Globalization

Read the following excerpts and discuss the questions below

- What is globalization?
- What is globalization for Viviane Forrester?
- Why is globalization a strange dictatorship for Viviane Forrester? Do you agree? Why or why not?
- What is ultra-liberalism?
- What are derivatives? How do they work?
- Why does Viviane Forrester make reference to casinos?
- Viviane Forrester argues that “globalization imposes the will of the dominant financial elite.” What does she mean by it? Find examples of the dominant financial elite.
- What are investment funds? How do they work? Who controls them? What is the connection between investment funds and globalization?
- Who is George Soros? What projects and initiatives have George Soros and the Open Society Foundations funded? What can you make of the support to these projects?
- Discuss the differences between globalism and nationalism. Think of current examples.

Dictatorship

Because the Republic is perceived by leftist intellectuals as the quintessential site of democracy, the Anglo-Saxon world is reconfigured in these texts as a model of totalitarianism. Each of the authors sees behind market transformations the rise of a new authoritarian regime, an ascendant world order that is assuming ever greater powers and crushing the foundations of democracy. This is a 'tyranny of profit', a 'financial terrorism', an 'infernal machine' or a 'market dictatorship' that is taking control of the entire planet and which is sapping democratic rights and freedoms (Bourdieu, 1998; Ramonet, 1999: 97; Forrester, 2000: 33, 52). Through its dogmatic neo-liberal creed, globalization has unleashed the power of capital onto the world to the extent that it now dictates to society, supersedes elected governments, imposes a single ideology and quashes all opposition. This 'authoritarian regime' imposes the will of a dominant financial elite across the entire planet and brings untold suffering to the many (Forrester, 2000: 26). Moreover, by concentrating power in unelected supranational institutions, it violates the sacred bond between citizen and state and a precious legacy of the democratic tradition.

For Ignacio Ramonet, the market has become a vehicle for American tyranny and the 'new masters of the world' have established a ruthless and oligarchic power structure that aspires towards absolute power: 'they recognise neither borders, not states, nor cultures and they deride national sovereignties' (Ramonet, 2001: 13). Just as during other periods of totalitarian rule, this new order establishes itself as a 'modern divinity' that requires absolute submission, that exerts forms of coercion and imposes its own ideology. By placing emphasis on profit above every other consideration, globalization threatens to destroy the sociopolitical edifice of western democracies and in particular, the notion of progress enshrined by the French Republic. Ramonet seeks to delineate the contours of this new order in which power is

It is Viviane Forrester who expresses most forcefully this conception of globalization as a form of totalitarianism. In her *Une Etrange dictature (A Strange Dictatorship, 2000)*, she argues that through propaganda, ruthless exploitation and an obsessive profit-making doctrine, Anglo-Saxon globalization has become as destructive in its effects as any other period of totalitarianism. This is a system that discards whole swathes of humanity, treats them as superfluous and consigns them, through mass unemployment, to a sort of living hell. Like other forms of dictatorship, globalization attacks the very fabric of society, its traditions, structures and values and is also characterized by a systematic destruction of human life. Thus, she evokes historical precedents that are both terrifying and extreme, those of European colonialism, apartheid in South Africa, racial segregation in the United States and the Holocaust of World War II to describe the true nature of this regime. Yet, globalization is a 'strange' dictatorship which is all the more dangerous because it extends its power in hidden and surreptitious ways and assumes the benign face of democracy: 'a dictatorship without a dictator has established itself without attacking any specific nation' (Forrester, 2000: 52). She suggests that this regime could however easily dispense with the apparatus of democracy and make the transition to a full dictatorship. Forrester's representation of globalization as an ascendant totalitarianism has attracted criticism for its alarmist and conspiratorial nature and some have denounced it as an 'apocalyptic vision' and others as an 'alarmist diatribe' (A. Supiot cited by Gollain, 1999: 485; Smith, 2004: 59).

Between Republic and Market: Globalization and Identity in Contemporary France

Sarah Waters

France Encounters Globalization

Peter Karl Kresl, Sylvain Gallais

Asset Management Firms

Discussion questions

- 1) What is the article about?
- 2) What is fund management? What, if any, is the problem with fund management?
- 3) What is the book "Woke, Inc.: Inside Corporate America's Social Justice Scam" about?

Read excerpts widely available online. What do you think of Vivek Ramaswamy's main argument in the book?

- 4) Discuss the following statement from the article “three gigantic American asset management firms — BlackRock, Vanguard and State Street — control too much of the global economy.
- 5) What is the connection between these fund management firms and universities?
- 6) Why do you think that these firms use their power to push companies in which they hold large investments into adopting liberal political positions such as climate change and the diversity?
- 7) What is the impact of these policies on society?
- 8) Should governments regulate these companies better and exercise more control over these companies?
- 9) How much power do the three companies have to accumulate before we decide it’s too much?

What BlackRock, Vanguard and State Street Are Doing to the Economy
May 12, 2022



By Farhad Manjoo, New York Times

When I got on the phone with Vivek Ramaswamy on Tuesday afternoon, I was not expecting to find common cause. Ramaswamy is a tech entrepreneur, a frequent contributor to conservative outlets such as The Wall Street Journal’s editorial page and the author of a book whose very title sounds as if it had been formulated in a lab at Fox News to maximally tickle the base and trigger the libs: “Woke, Inc.: Inside Corporate America’s Social Justice Scam.”

I’d reached out to Ramaswamy to discuss his new venture, Strive Asset Management, an investment firm that he says will urge corporations to stay out of politics. Among Strive’s funders, though, is one of the more politically active people in business, Peter Thiel, the billionaire venture capitalist who supported Donald Trump and is now funding a slate of Trump-loving congressional candidates.

It turned out I was right: I did not agree with a lot of what Ramaswamy had to say. Not only are our politics radically at odds, we also differ on what “politics” means in modern American capitalism. Yet despite our disagreements, something odd happened. I found myself nodding along with what is perhaps Ramaswamy’s fundamental point: that three gigantic American asset management firms — BlackRock, Vanguard and State Street — control too much of the global economy.

The firms manage funds invested by large institutions like pension funds and university endowments as well as those for companies and, in some cases, individual investors like me and perhaps you, too. Their holdings are colossal. BlackRock manages nearly \$10 trillion in investments. Vanguard has \$8 trillion, and State Street has \$4 trillion. Their combined \$22 trillion in managed assets is the equivalent of more than half of the combined value of all shares for companies in the S&P 500 (about \$38 trillion). Their power is expected to grow. An analysis published in the Boston University Law Review in 2019 estimated that the Big Three could control as much as 40 percent of shareholder votes in the S&P 500 within two decades.

Why is this a problem? Ramaswamy argues that the main issue is that the firms are using their heft to push companies in which they hold large investments into adopting liberal political positions — things like focusing on climate change or improving the diversity of their work force. I think that’s a canard, as I’ll explain below.

The real danger posed by the three is economic, not political. The American economy is lumbering under monopoly and oligopoly. In many industries, from airlines to internet advertising to health care to banks to mobile phone providers, Americans can do business with just a handful of companies. As the journalist David Dayen has argued, this increasing market concentration reduces consumer choice, raises prices and most likely harms workers.

BlackRock, Vanguard and State Street have been extraordinarily good for investors — their passive-investing index funds have lowered costs and improved returns for millions of people. But their rise has come at the cost of intense concentration in corporate ownership, potentially supercharging the oligopolistic effects of already oligopolistic industries.

John Coates, a professor at Harvard Law School, has written that the growth of indexation and the Big Three means that in the future, about a dozen people at investment firms will hold power over most American companies. What happens when so few people control so much? Researchers have argued that this level of concentration will reduce companies’ incentives to compete with one another. This makes a kind of intuitive sense: For example, because Vanguard is the largest shareholder in both Ford and General Motors, why would it benefit from competition between the two? If every company is owned by the same small number of people, why fight as fiercely on prices, innovations and investments?

Indeed, there is some evidence that their concentrated ownership is associated with lower wages and employment and is already leading to price increases in some industries, including in airlines, pharmaceuticals and consumer goods. The firms dispute this. In a 2019 paper, Vanguard’s researchers said that when they studied lots of industries across a long period, they did not “find conclusive evidence” that common ownership led to higher profits.

For These Families, H.B.C.U.s Aren’t Just an Option. They’re a Tradition.

But if the Big Three keep growing, the effects of their concentrated ownership will get only worse. Einer Elhauge, also of Harvard Law School, has written that concentrated ownership “poses the greatest anticompetitive threat of our time, mainly because it is the one anticompetitive problem we are doing nothing about.”

Ramaswamy says his new firm, Strive, will aim to limit the Big Three’s power through competition. If Strive attracts enough investors to gain a say in how companies are run — a huge “if,” considering that Ramaswamy has said that Strive has raised only about \$20 million compared with the trillions managed by the Big Three — Ramaswamy says that he will push for companies to focus on “excellence” rather than wading into heated political issues.

But the goal of staying out of politics in 2022 is about as realistic as staying dry in a hurricane. Last year, for example, BlackRock, Vanguard and State Street supported a successful effort to shake up the board of Exxon Mobil by installing new members who promised to take climate

change more seriously. Was that because of excessive wokeness, as Ramaswamy says, or because Exxon Mobil had been underperforming its peers for several years, and it was woefully ill prepared for the transition to renewable energy that has been transforming energy markets? The move seems well within what the investment firms say is their main goal, looking out for the long-term interest of shareholders. And what if the firms hadn't backed the climate initiative — wouldn't that have been construed as a political decision by the activists who have called on shareholders to push corporations to address the climate? (In any case, BlackRock announced this week that it would most likely vote for fewer climate-related shareholder proposals in 2022 than it did in 2021.)

In late 2018, a few months before his death, John C. Bogle, the visionary founder of Vanguard who developed the first index fund for individual investors, published an extraordinary article in *The Wall Street Journal* assessing the impact of his life's work. The index fund had revolutionized Wall Street — but what happens, he wondered, “if it becomes too successful for its own good?”

Bogle pointed out that asset management is a business of scale — the more money that BlackRock or Vanguard or State Street manages, the more it can lower its fees for investors. This makes it difficult for new companies to enter the business, meaning that the Big Three's hold on the market seems likely to persist. “I do not believe that such concentration would serve the national interest,” Bogle wrote.

Bogle outlined several ideas for limiting their power, but he pointed out problems with a number of them. For example, regulators could prohibit index funds from holding large positions in more than one company in a given industry. But how then would they offer an index fund that invested in all companies in the S&P 500, one of the most popular kinds of funds?

Coates, of Harvard, argues that policymakers will have to move carefully to manage the dangers of concentration without limiting the benefits to investors of these firms' low-cost funds. “No doubt getting the balance right will require judgment and experimentation,” he wrote.

But the most pressing issue is for us to recognize the problem. The growing influence of three large fund managers is not likely to diminish. Ramaswamy's take on the problem is wrong, but he's right that it's a problem. How much power do the three companies have to accumulate before we decide it's too much?

Class 6: Feb 13: Law reform

Discussion questions

- 1) What is Bufford's article about?
- 2) What is the Rule of Law?
- 3) Do Civil Law jurisdictions adhere to the concept of the Rule of Law?
- 4) What is the state of law and legal certainty?
- 5) What Law Reform type and characteristics transpire in Bufford's article?
- 6) Is there a connection between development and the adoption of the Rule of Law?
- 7) Discuss the following quotation from Bufford.

Law matters in economic development. The Rule of Law' is an indispensable foundation for a market economy, which provides an essential environment for the creation and preservation of wealth, economic security, and well-being, and the improvement of the quality of life.² The Rule of Law is part of the "software" of governmental regulation that is needed to operate the "hardware" of free markets.

- 8) Do an online search of law reform in a foreign country. Briefly summarize the content and the process of the law reform.

Class 7 Feb. 27: Midterm test

Class 8: March 6: An Economic Sociological analysis of property crimes

- List and briefly explain property criminal offences in Canada. Who, if any, do they benefit? Who, if any, do they harm?
- How do sociologists conceptualize and explain crime? How does it differ from a legal conception of crime?
- What does sociological theory contribute to the study of crime?
- How is property crime related to race, class, and gender?
- How has globalization affected the development of property crimes?

Class 9: March 13: The Law of Negligence

The main outcome of a private law lawsuit is the payment of compensation (money). Similarly, settlements, i.e., out of court agreements also involve the payment of compensation. So, for example, if a driver runs over a pedestrian, the driver will have to pay money to the pedestrian to compensate for the injuries and other damages the pedestrian suffered. This is so whether they go to trial or whether they resolve the matter out of courts, if they do not want to go to trial. This applies to virtually all private law cases, including rape, wrongful deaths, child support, and contractual breaches, to name a few.

- What do you think of this?

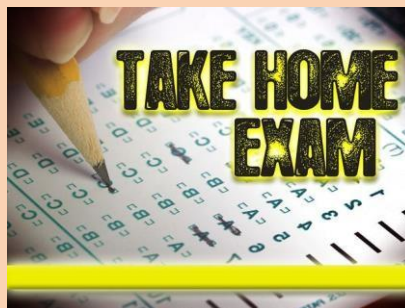
- What are the implications of solving problems through money?
- Can you think of other –realistic- alternatives to solve Private Law conflicts?
- Do an online search of societies and legal traditions to analyze whether they have other means to solve these conflicts.

Class 10: March 20 Sociological research



Do an online research about crypto currencies and write a short essay explaining what they are, their origin, function, advantages, disadvantages, and any legal regulations that exist or that have been proposed.

Class 11 March 27: Distribution of final take-home



Dec. 5: Submission of final take-home



*** TRIGGER WARNINGS**



Some materials in this course may be sensitive. Course materials, including lectures, class activities, hypotheticals, scenarios, examples, court cases, and films shown in class, may have mature content, including violent, sexual, and strong language content.

Disclaimers

Except for newspaper articles and court cases, all class activities are hypothetical and fictitious. Any resemblance to actual persons, institutions, or events is purely coincidental. The views and opinions expressed in the articles assigned for reading in this course, as well as those expressed in videos shown in class, are those of the authors or the individuals who made those opinions and do not necessarily reflect the position of the course professor. Questions, follow-up questions, examples, and comments made within the context of class activities do not purport to reflect the opinions or views of the course professor. All such articles, comments, questions, examples, and activities are meant solely to facilitate the discussion and study of Law. They are not meant to advocate or promote any crime or unlawful action. Neither are they meant to advance any ideological perspective. Discretion advised before signing up for this course.