

ECONOMIC SOCIOLOGY OF LAW



ECONOMIC SOCIOLOGY OF LAW

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- Remote Synchronous/Asynchronous.

Class structure

- Short lectures.
- Class activities (research and discussion)
- Some class activities are synchronous; and some are asynchronous.
- Please check the **CLASS SCHEDULE** regularly!

NO RECORDING



Evaluation

- Portfolio of activities: 40%
 - Submission: April 3
- Test: 30%
 - Distribution: Feb. 27
 - Submission: March 6
- Final take-home: 30%
 - Distribution: March 27
 - Submission: April 3



Content

1. Sociology of Law and Economic Sociology of Law.
2. Law and Economics.
3. Legal regulation of the economy. Theories of regulation.
4. Globalization and post-industrial society.
5. Asset management funds.
6. Contracts, Criminal Law, Torts.

Law and Economics



Law and Economics

Law and Economics deals with the economic analysis of law. It focuses on efficiency and incentives.

- **Efficiency.** A legal situation is said to be efficient if a right is given to the party who would be willing to pay the most for it. There are two paths for legal efficiency.
- Law and economics stresses that **markets** are more efficient than courts.
- When possible, the legal system will force a transaction into the market. When this is impossible, the legal system attempts to “**mimic a market**” and **guess** what the parties would have desired if markets had been feasible.

Law and Economics

- **Incentives.** Emphasis on incentives and people's responses to these incentives.
 - For example, the purpose of damage payments in tort law is not to compensate injured parties, but rather to provide an incentive for potential injurers to take efficient (cost-justified) precautions to avoid causing the accident.



Law and Economics: Principles

- People face trade-offs.
 - Everyone faces decisions that put one option above the other. Most decisions, especially economic ones, involve trading off one thing for another. In society, one of the main trade-offs we experience is between efficiency and equity.
- The cost of something is what you give up to get it.
 - Since people face these trade-offs, a decision requires a comparison of the costs against the benefits of alternative courses of action.

Law and Economics: Principles

- People respond to incentives.
 - Incentives can be positive or negative, i.e., you can incentivize people to do something or not to do something.
 - For example, a positive incentive would be offering employees a bonus if they work extra hours.
 - A negative incentive can be exemplified by extra taxes governments might put on gas in order to encourage people to walk instead of drive cars. Also, when penalties for an action increase, people will undertake less of that action.

Law and Economics: Premise

Human beings act rationally



Law and economics is **premised on the –wrong- assumption** that **individuals are rational and respond to incentives.**

Sociology of Law



Sociology of Law

- Sociology of Law considers legal structures (i.e. the legal system), legal process (how law is made), and the interaction of the law in societal change and social control.
- Sociology of Law understands law as part of social institutions.
- Legal categories and legal reasoning interact with social hierarchies based on race, class, gender and sexuality.
- It analyzes relations between law and social control and social change.
- A sociological interpretation and application of the law does not bar the study of rules. But it differentiates between the proclaimed objectives of legal norms and the actual workings and consequences of law.

Sociology of Law: empirical research

- Research problem
- Research question
- Research goals
- Hypothesis
- Theoretical framework
- Literature review
- Methodology
- **(Empirical) Data collection**
- Data analysis
- Conclusions



Sociology of Law: Research Method

18 Key Sociology Methods Concepts

Quantitative
Data

Qualitative
Data

Primary
Research

Secondary
Research

Questionnaires
Surveys

Field/ Lab
Experiments

Official
Statistics

Non/ Participant
Observation

Interviews

Public/ Private
Documents

Theoretical
Factors

Practical
Factors

Ethical
Factors

Positivism
Social Facts

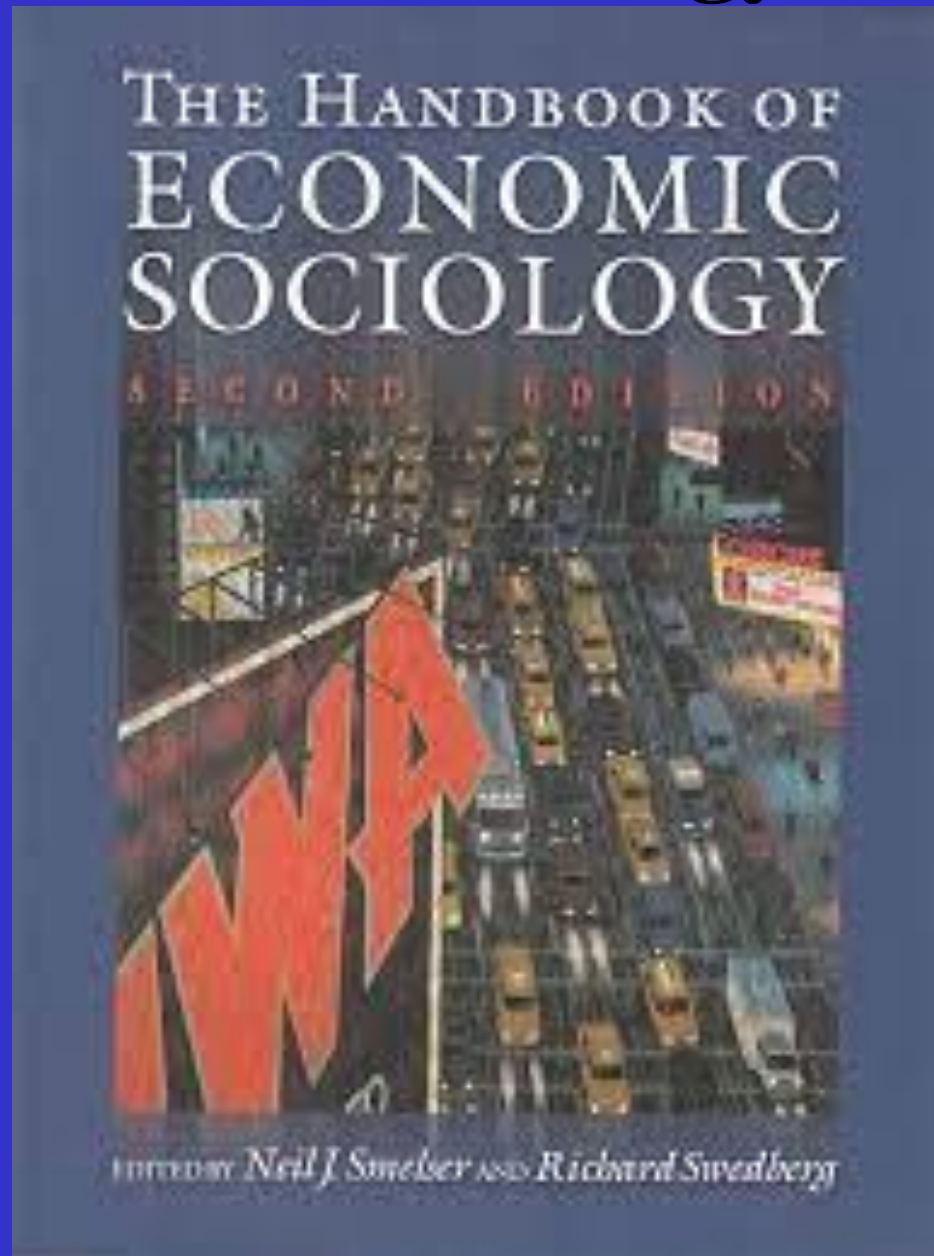
Interpretivism
Verstehen

Reliability

Representativeness
Sampling

Validity

Economic Sociology of Law



Economic Sociology

- Economic sociology is the study of how the economy is produced and reproduced through social processes.
- Legal institutions are not well theorized by the law and economics paradigm that now dominates legal scholarship and a more sociological understanding of how law shapes ongoing economic behavior is needed.
- Sociologists argue that sociological theories explaining patterns of political, religious, and family behavior can also explain economic behavior.
- Like families, polities, and religions, markets are social structures, with conventions and roles and conflicts.
- Economic conventions exhibit widely different patterns of economic behavior just like other types of conventions.

Economic Sociology

- Economic behavior is driven by more than narrow economic laws that determine what is efficient.
- Social processes explain much of the variation in economic behavior.
- The human species is a highly social one; and our behavior is shaped systematically by social context.
- Modern markets are social structures that consist of roles, conventions, and power struggles.
- Sociologists have approached explaining the social structures and conventions found in markets much as they approach explaining structures and conventions in a church or a school system.
- Common sense tells us that that markets and economic conventions are shaped by economic laws. Sociologists find that concrete social processes matter too.

Economic Sociology

- The great promise of economic sociology is that it can explain aspects of economic behavior and institutions that have been resistant to explanation.
- The social mechanisms underlying economic behavior do not boil down to a single principle, such as the principle of self-interest in neoclassical economics.
- Behaviors vary so significantly.

	Economic sociology	Mainstream economics
Concept of the actor	The actor is influenced by other actors and is part of groups and society	The actor is uninfluenced by other actors ('methodological individualism')
Economic action	Many different types of economic action are used, including rational ones (rationality as variable)	All economic actions are assumed to be rational (rationality as assumption)

Economic Sociology

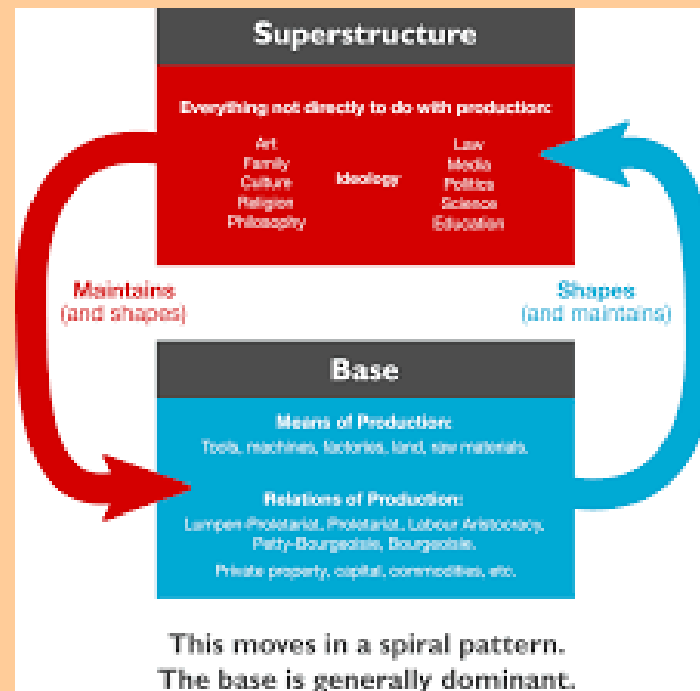
Factors that contribute to the shaping and evolution of economic conventions

- Political institutions
- Economic models
- Networks
- Ideas

Economic Sociology

Political institutions

- The structure of political institutions determines who will shape economic institutions and conventions and what those institutions and conventions will look like.



Economic Sociology

Economic models

- Firms and nations follow the rational strategies of their role models, just as adolescents follow the behavior of their role models, and hence much economic behavior looks more like crowd behavior than like the result of pure rational calculation.

Economic Sociology

Social networks

- Social networks shape economic practices in a wide range of ways—by providing sanctions for malfeasance but also by providing cues that shape prices, by providing business strategies that industries can copy, and by shaping the competitive environment.

Economic Sociology

Ideas

- Ideas influence economic behavior and institutions. And ideas embedded in economic customs often shape new economic customs.
- For instance, the idea of market competition as efficient arbiter is well institutionalized in the industrial sector in the United States, and that idea has come to shape other sectors, such as health care and university education.
- In the modern world there is a wide range of rational ideas—visions of how to rationalize things—and understanding their origins and influence promises to help us to understand why economic institutions and behaviors vary so significantly.

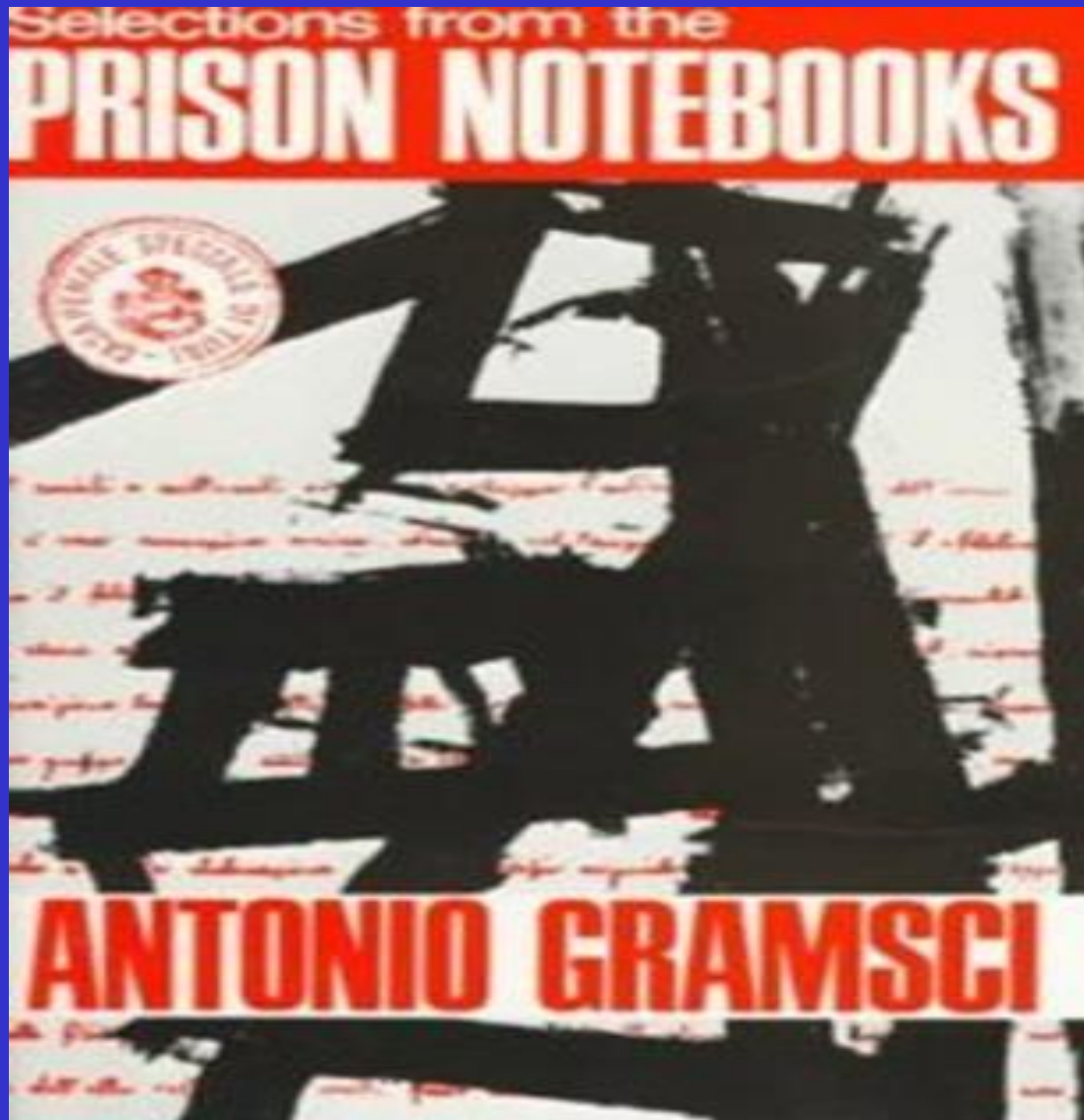
Hegemonic discourse



Hegemonic discourse

- Hegemony is the “cultural, moral and ideological” leadership of a group over allied and subaltern groups.
- Hegemony is a form of social control exercised primarily through a society's superstructure.
 - Consent to the rule of the dominant group is achieved by the spread of ideologies—beliefs, assumptions, and values—through social institutions such as schools, churches, courts, and the media, among others.
- It is based on the equilibrium between consent and coercion.
- Gramsci first noted that in Europe, the dominant class, the bourgeoisie, ruled with the consent of subordinate masses. The bourgeoisie was hegemonic because it protected some interests of the subaltern classes in order to get their support.

Hegemonic discourse



Hegemonic discourse

- Human beings had a high degree of agency in history: human will and intellect played a role as fundamental as the economy.
- The task for the proletariat was to overcome the leadership of the bourgeoisie and become hegemonic itself.
- Only a hegemonic group that has the consent of allies and subalterns can start a revolution, which would mean that it is necessary to establish proletarian hegemony before the socialist revolution.
- Organic intellectuals are the dominant group's 'deputies' exercising the subaltern functions of social hegemony and political government.”
- Their “function in society is primarily that of organizing, administering, directing, educating or leading others.” The organic intellectuals, who must be unrelated to the intellectuals of the bourgeoisie, must organize and mediate in the formation of the national-popular collective will.

Theories of regulation



Legal regulation of the market

- Regulation has become one of the main determinants of modern economies.
- Virtually every sector is subject to general laws and regulations as well as specific rules and standards.
- A traditional argument to justify regulatory interventions is the **promotion of public interests**.
- Regulations can lead to unintended consequences and serve the interests of powerful private interest groups rather than the public interest and social welfare.
- There is an extraordinary pervasiveness of government regulation in our lives raises a number of questions.
- Importance of the legal system for development of a market economy and the importance of law and economics in influencing policy.

Legal regulation of the market

- Free market economies
 - In a purely free market economy, the law of supply and demand, rather than a central planner, regulates production and labor.
 - Companies sell goods and services at the highest price consumers are willing to pay while workers earn the highest wages companies are willing to pay for their services.
- Collective economies.
 - The government controls all of the means of production and the distribution of wealth, dictating the prices of goods and services and the wages workers receive.
- **No country has a purely free market and no country is completely a collective economy. There is some sort of combination of markets.**

Public interest standard

- It is based on two assumptions. First, unhindered markets often fail because of the problems of monopoly or externalities. Second, governments are capable of correcting these market failures through regulation.
- This theory has been used both as a prescription of what governments should do and as a description of what they actually do.
- Governments control prices so that natural monopolies do not overcharge, impose safety standards to prevent accidents such as fires or mass poisonings, regulate jobs to counter the employer's monopolist power over the employee, regulate security issuances so investors are not cheated, and so on.
- The public interest theory of regulation has become the cornerstone of modern public economics.

Enforcement theory

- There are four strategies of business control, involving ever growing powers of the state vis-à-vis private individuals:
 - market discipline
 - private litigation
 - public enforcement through regulation
 - and state ownership.
- The basic premise of the enforcement theory of regulation is that all of these strategies for social control of business are imperfect and that optimal institutional design involves a choice among these imperfect alternatives.

Enforcement theory

- The enforcement theory specifically recognizes a basic trade-off between two social costs of each institution: disorder and dictatorship.
 - Disorder refers to the ability of private agents to harm others – to steal, overcharge, injure, cheat, impose external costs, etc.
 - Dictatorship refers to the ability of the government and its officials to impose such costs on private agents. As we move from private orderings to private litigation to regulation to public ownership, the powers of the government rise, and those of private agents fall.

Regulatory practice

- There is systematic variation in the regulation of the economy and the institutions and tools to regulate the economy among countries that is not a consequence either of the pressures toward efficiency or of domestic political choice, but rather a product of historical practices associated with the legal tradition of each country.
- Countries have pronounced styles of social control of business intimately related to the origin of their laws.
 - Socialist and French legal origin countries regulate activity more heavily than do the common law countries.

Lex Mercatoria



Lex Mercatoria

- The body of customary rules and principles relating to merchants and mercantile transactions and adopted by traders themselves for the purpose of regulating their dealings.
- The formation of lex mercatoria is deeply rooted in the ancient times. It is associated with the overseas trade which was conducted mainly in the area of Greece, Egypt, Phoenicia, and especially Rome.
- Traders negotiated contracts, partnerships, trademarks, and various aspects of buying and selling. The law merchant gradually spread as the traders went from place to place. Their courts, set up by the merchants themselves at trade fairs or in cities, administered a law that was uniform throughout Europe, regardless of differences in national laws and languages. It was based primarily on Roman law, although there were some Germanic influences; it formed the basis for modern commercial law.

Lex Mercatoria

- 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.

Lex Mercatoria

- 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.

Lex Mercatoria

- 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.



Globalization



Globalization

- The tyranny of economics in the modern world. We live in a society where jobs are disappearing, which deprive very large numbers of people of the opportunity to earn a living.
- Profound change in society.
- Loss of job security.
- Economy is wrapped up in pure speculation.
- The working masses have become superfluous.
- Worse than being exploited is no longer to be worth exploiting.
- Governments do not control the economy any more. Global speculative firms do. There is an invisible dictatorship, as most people are not aware of the existence of these firms. The world has become more tyrannical.

Globalization

- Virtual markets.
- People deal in business transactions of things that do not exist.
- These transactions do not involve real assets, nor even symbols for such assets. People buy and sell, for example, the risks involved in contracts which have not yet been signed or are still being negotiated; where debts are sold and are later bought and sold on again and again; where deals are made, involving virtual values which are already guaranteed: they in turn give rise to other contracts based on the negotiation of the previous ones.
- It is an unnatural market based on illusions. In this market in risks and debts people speculate on speculation.

Law reform



Law reform

- Law reform is the amendment of a substantial –substantive, procedural or organizational– area of the law by repealing existing law or by introducing new law with the effect of transforming the status quo.

Types of law reform:

- Involuntary: colonization
- Unification/harmonization
- Legal transplants, i.e., the direct incorporation of a foreign legislative text into another jurisdiction with marginal or no modifications at all and with little participation of the local community.

Law reform: legal transplants

Cost-Saving Transplant	The reason to export a foreign legislative text is simply to save time and money.
Externally-Dictated Transplant	The adoption of a foreign legal model comes as a condition - generally for doing business or for obtaining a loan from a foreign country or an international institution.
Entrepreneurial Transplant	Local individuals and groups encourage the adoption of a foreign legal model, motivated by a desire to gain political or economic benefits from the transplant.
Legitimacy-Generating Transplant	The legal transplant takes place because of the prestige of the foreign model, whether of a particular legal institution or the entire legal system.

Law reform: Legal transplants

Legal expert

- A common feature of all four types of legal transplants is the necessary presence of a legal expert of a developed state, who carries out the legal reform by handing down a foreign legislative text.

Law reform: Law and Development

- 1960's within a post World War II context
 - A non-communist approach to modernizing developing countries through legal reform.
 - The goals of early Law and Development scholars was to act on the perceived discrepancies of an ideal – essentially North American - conception of law in society and the legal realities of developing countries.
- End of the Cold War
 - It mimicked most of the features of the first period, but this time, US law reformers faced stronger competition from Western European countries.
 - At the end of the Cold War, law reform programs were launched in virtually all developing countries and democracies in transition.
 - Sponsored by international governmental and non-governmental organizations, such as the United Nations Development Program.

Law reform: Law and Development

Who does Law Reform?

- Legislators
- Law Reform Commissions (agencies)
- Courts
- Academics
- External/foreign agents (banks, presidents).

Law reform: Law and Development

Law Reform Process

- The process of law reform is secretive. What we see is only the tip of the iceberg.
- Invention of a solution
- Internal comparison
- Historical comparison
- External comparison (look abroad).

Property crimes



Law and Economics: Criminal Law

- Criminal law protects property rights from intentional or unintentional harm.
- The primary purpose is to induce potential criminals to internalize—that is, take account of—the external costs of their actions.
- Criminal law is enforced by the state rather than by victims. This is because efficient enforcement requires that only a fraction of criminals be caught (in order to conserve on enforcement resources) and the punishment of this fraction be multiplied to reflect the low probability of detection and conviction. If, for example, only one out of four criminals is caught and punished, then the punishment must be four times the cost of the crime in order to provide adequate deterrence.

Law and Economics: Criminal Law

- Incarceration of the criminal causes two forms of deadweight loss: the loss of the criminal's earning power in a legitimate job in the outside world and the cost to taxpayers of providing a prison and guards. But because so few criminals have enough wealth to pay multiplied fines, private enforcement would not be profitable for private enforcers, and so the state provides enforcement. In some circumstances, incarceration serves the additional function
- Economic theory predicts that criminals, like others, respond to incentives, and there is unambiguous evidence that increases in the probability and severity of punishment in a jurisdiction lead to reduced levels of crime in that jurisdiction.

Law and Economics: Property

- A legal system should provide clear definitions of property rights, i.e., parties must be able to determine unambiguously who owns the asset and exactly what set of rights this ownership entails.
- Ideally, efficiency implies that, in a dispute regarding the ownership of a right, the right should go to the party who values it the most.
- But if exchanges of rights are allowed, the efficiency of the initial allocation is of secondary importance.
- The Coase theorem states that if rights are transferable and if transactions costs are not too large, then the exact definition of property rights is not important because parties can trade rights, and rights will move to their highest-valued uses.
- In many circumstances, however, who owns the right will matter. Transactions costs are never zero, and so if rights are incorrectly allocated, a costly transaction will be needed to correct this misallocation.

Property crimes

- Empirical results indicate that the level of poverty and the unemployment rate affect property crimes.
- In contrast, the length of sentence have no affect on property crime rates.



Property crimes: Theft

Fraudulently and without color of rights taking anything with intent to deprive temporarily or absolutely its owner of thing.

- Actus reus:
 - The trespassory (non consensual) taking and carrying away of the personal property of another.
 - Voluntary act: 2 elements: the taking (caption) and the asportation of the property. Any movement, no matter how trivial, entails asportation.
 - Social Harm: conduct, no need to damage its value.
 - Without color of right: a person asserts a possessory right, a claim of ownership or lawful possession to the thing.

Property crimes: Theft

- Mens rea: (fraudulent) intent and specific intent to steal, i.e., to deprive the owner (temporarily or absolutely) of his personal – tangible- property.
 - Fraudulently means a dishonest or immoral intent. A dishonest intent to appropriate the property.

Degree: grand (value of property more than \$5000) up to ten years in prison vs. petty (value of property \$5000 or less) up to 2 years.

Doctrine of recent possession: Where it is proved that the accused has possession of recently stolen property, and no explanation is given for that possession, the trier of fact may, but must not, draw an inference that the accused is guilty of theft even if there is no evidence of guilt

Property crimes: Theft

Specific theft offenses:

- To abstract, consume or use electricity, gas, or telecommunications services.
- To make, own, or sell any instrument or device to obtain a telecommunications service without paying for that service, e.g., TV descrambler.
- Theft by a person required to account. Anyone who having received anything from any person on terms that require him to account for or pay it to that person fraudulently fails to account for or pay it. For example. Taxi driver. MR: fraudulent intent.

Property crimes:

Embezzlement or theft by conversion

- Definition: Fraudulently and without color of rights converting anything with intent to deprive temporarily or absolutely its owner of thing.
- Elements of the offense: (i) A came into possession of the personal property of another in a lawful manner, and (ii) that A thereafter fraudulently converted –appropriated– the property, i.e., performed some act that demonstrated his intent to deprive another of the property).
- Convert: legal obtains possession of property but fails to return it.

Property crimes: Robbery

- Steal with violence or threats of violence to a person or property.
 - Violence to the victim
 - Violence to a third person
 - Violence to property (personal or real estate).
 - Threats of violence
 - Steal while armed with an offensive weapon or imitation thereof.
- Violence can occur during theft, immediately after or before.
- Violence: no need to be severe or cause injury to the victim. Any form of physical interference from a push to a punch will amount to violence.

Property crimes: Robbery

- Actus reus:
 - Assault any person with intent to steal
 -
- Mens rea:
 - Intention
 - Specific intent: to deprive the owner of the property absolutely or temporally.



Property crimes:

- **Extortion**

- A person threatens another with some consequence so that the person is forced to commit an act or to omit doing something that he or she otherwise would not have done.

- **False pretence**

- A representation by words or other means
- About facts, past or present
- That the accused knows to be untrue, and
- That is made with dishonest intent to make someone do something
- E.g., I tell you I have \$ 5000 in my checking account so that you will accept a cheque. Exaggerated commendations or depreciation of the quality of anything is not false pretence.

-

Property crimes:

Fraud

-
- Actus reus: 2 elements: deprivation (detriment, prejudice, or risk of prejudice to the economic interests of the victim) and dishonesty (an act of deceit, falsehood or other fraudulent means).
-
- Mens rea: knowledge that one is undertaking a prohibited act that could deprive another person of property or put that property at risk.
-
- Fraud includes false pretences but also other forms of deceit. There have been many proposals to merge both offences in only one crime.

Torts



Law and Economics: Torts

- Because most accidents are caused by a joint action of injurer and victim (a driver goes too fast, and the pedestrian he hits does not look carefully), efficient rules create incentives for both parties to take care; most negligence rules (negligence, negligence with a defense of contributory negligence, comparative negligence) create exactly these incentives.
- Strict liability is important when the issue is not only the care used in undertaking the activity, but also whether the activity is done at all and the extent to which it is done (the level of the activity); highly dangerous are generally governed by strict liability.
- Courts should look for efficiency in the allocation of risks.

Law and Economics: Torts

- Tort law protects property rights from intentional or unintentional harm.
- The primary purpose is to induce potential tortfeasors (those who cause torts, or accidents) to internalize—that is, take account of—the external costs of their actions.
- The economic analysis of tort law has stressed issues such as the distinction between negligence (a party must pay for harms only when the party failed to take adequate or efficient precautions) and strict liability (a party must pay for any injury caused by its actions).

Law and Economics: Torts

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The negligent tort



The negligent tort

- Conduct.
- Negligence.
- Causation.
- Damage.
- Lack of a full defence.

The law of negligence

- Conduct.
- Negligence.
- Causation.
- Damage.
- Lack of a full defence.

Negligence

The negligent act is determined by identifying the appropriate **standard of care** and applying it to the facts of the case. The standard of care is that of a reasonable –careful- person. It is an objective standard focused on the defendant's conduct with reference to that of a reasonable person.

The central element in applying the standard of reasonable care is the concept of a reasonably foreseeable risk.

Two questions:

- **Duty of care:** Does the defendant owe the plaintiff a duty to take reasonable care to avoid causing an unreasonable risk of harm?
- **Breached standard of care:** Did the defendant breach their standard of care? The plaintiff must prove that the defendant did not live up to the standard of care of a reasonable person in preventing the harm the plaintiff suffered.

The duty of care

In Canadian negligent tort law, the plaintiff must demonstrate the defendant owed him or her **a duty of care**—a specific legal obligation to not harm others or their property.

A duty of care requires a relationship of sufficient proximity. That relationship is informed by **the foreseeability of an adverse consequence of one's actions**, subject to policy reasons that a duty of care should not be recognized.

To find a duty, there must be some circumstance or evidence to suggest that a person in the position of the defendant ought to have reasonably foreseen the risk of injury.

The duty of care. Test

(i) reasonable foreseeability; and

- The first question is whether the harm that occurred was the reasonably foreseeable consequence of the defendant's act.

(ii) proximity.

- The second question is whether there is a relationship of such a nature that the defendant may be said to be under an obligation to be mindful of the plaintiff's legitimate interests in conducting his or her affairs.

Types of duty of care

- Specific
 - Apply to one person in particular.
 - Example: A professional gives legal advice to one client.
- General
 - Apply to the public.
 - Example: each motorist owes everyone a duty of care while driving. If the court decides the defendant did not meet his or her duty of care, the defendant can be found in “breach of duty of care”

Breached standard of care

- Once a duty of care has been found, it is necessary to ask whether the defendant has acted in such a way as to have breached that duty of care.
- Standard of care speaks to what is *reasonable* in the circumstances, i.e., what the reasonable prudent person does.
- Level: The **general rule** is that defendants are expected to act with a reasonable level of skill in the activity they are undertaking. **The applicable standard of care is that of a reasonably competent person undertaking the activity in question.**
- The so-called *reasonable person* in the law of negligence is a creation of legal fiction. Such a "person" is really an ideal, focusing on how a typical person, with ordinary prudence, would act in certain circumstances. The test as to whether a person has acted as a reasonable person is an objective one, and so it doesn't take into account the specific abilities of a defendant.
- Proof: The standard of care will always be based on reasonable foreseeability. This means that the courts will not ask the defendant whether they foresaw a certain outcome or not, but rather they will seek to work out what the defendant ought to have foreseen.

Damage

- No liability can arise in negligence unless the plaintiff suffers damages as a result of defendant's wrongful act, but not all losses may be compensated.
- Remote damages are NOT compensated.
- Defendant is liable only for the REASONABLY FORESEEABLE CONSEQUENCES OF ITS NEGLIGENCE.
- Special remoteness issues: The Thin-Skull rule: as long as some physical injury to the plaintiff was foreseeable, the defendant is liable for all the consequences of the injury arising from the plaintiff's unique physical or psychological make-up whether or not those consequences were foreseeable.

Law and Economics: Contracts

- Contract law is crucial for a market economy.
- It is consistent with economic efficiency. It is efficient for parties to be allowed to write their own contracts, and under normal circumstances, for courts to enforce the agreed-on terms, including the agreed-on price.
- The courts will generally not enforce contracts if performance would be inefficient, but, rather, will allow payment of damages. For example, if I agree to build a house for you in return for \$50K, but costs increase and it would cost me \$150K to build, it is inefficient for me to build it. Courts, recognizing this, allow me to compensate you with a monetary payment instead. This is efficient.
- Not all doctrines are efficient. If the courts decide that liquidated damages are too high—that they are a penalty rather than true damages—they will not enforce the amount of contractual liquidated damages.