The Intellectual Foundations of
"Law and Economics"

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The principal intellectual foundation of "law and economics" has been its relative success in illuminating two fundamental questions: First, what effects do legal rules have upon society? And second, how do social forces shape and determine the law? Law and economics has enjoyed relatively greater success in addressing these questions in a provocative and illuminating manner than have other approaches to the study of the phenomenon of law.

Law and economics is not a set of analytic propositions that follow inexorably from first principles. It is a tradition of inquiry, analysis, and exploration of law that is as important for the questions it poses as the questions it answers. Critics who set law and economics, not against competitive methodologies and approaches, but against a standard of logical perfection miss this essential point. As scholars of the law, we have to work with the best we have. The continuing vitality of the law-and-economics tradition in the law schools is evidence, not of the perfection of law and economics, but of the fact that when the serious scholar of the law wishes to turn from the preliminaries and get on with intensive investigation of law and legal institutions, he can find tools and insights in the law-and-economics tradition that advance his work.

There are two distinguishable intellectual traditions present in modern law and economics. First is the venerable tradition of political economy, derived from the work of Adam Smith and a long line of distinguished writers and commentators. The interest of this tradition in law arises out of an interest in markets. Laws governing property rights, the enforceability of contracts, and the freedom of commercial activity play an important role in the way that markets behave. Thus an interest in market behavior leads naturally to an interest in law and the way in which law affects market behavior.

The second tradition is that of the law schools. In the law schools, law and economics evolved out of the agenda of legal realism. Legal realism taught that legal scholars should study the law as it works in practice by making use of the social sciences, and economics was one of the social sciences to which academic lawyers turned.

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The scientific study of the social policy issues that inevitably lie within law and economics is a perilous and fragile enterprise, for the distance between investigator and subject is a self-imposed discipline at best. I will discuss these issues in the law-school context, but similar perils attend all work with obvious connotations for applied social policy.

There are three different functions that law-school faculty members perform: first, the exposition and transmission of the arts and traditions of the legal profession; second, the formulation and advocacy of reforms in the legal system; and third, the development and dissemination of scholarly truth about the legal system. Most full-time American law teachers now perform all three of these functions, albeit with varying emphasis.

The place of the first function in the life of a law school is easy enough to understand. Law schools exist in large part to prepare people for the practice of the law. This requires that faculty transmit to students the language, customs, received wisdom, and crafts of the law. Students must be taught to think and talk like lawyers so that upon graduation they will be able to perform their professional function.

There is a direct relationship between teaching about the law and issues of why, how, and with what effect. The task of organizing and explaining the law efficiently calls for organizing principles, and among the most convenient and powerful organizing principles are the purposes served by a rule or institution. To the extent that legal doctrine can be understood as serving specific ends, and the connection between that doctrine and that end can be clearly articulated, the task of communicating that doctrine has been simplified. It is much easier for a student to understand a body of law coherently related to some social purpose than to memorize a complex and apparently senseless body of rules. It is but a short step from the task of identifying and articulating the social purpose of legal rules to the next two functions: formulating and advocating reforms and pursuing the scientific study of law.

Any legal system that aspires to improve (or, more modestly, to offset deterioration) must have institutions that formulate and propose legal reforms. This is not an enterprise for which the academic has an exclusive franchise. In our republican system, an important function of the political process is to generate new ideas and proposals for reform and improvement of the law. The academic does offer some advantages to this process. The needs of teaching require the academic to think widely and systematically about areas of the law—to see the law whole, as an interrelated system. The academic's distance from practice means that he is not the servant of any immediate interest affected by law. A society could do worse than assign to men and women with the primary task of instructing the young, an interest in the law broadly viewed, and the time for patient reflection, the task of formulating and advocating ideas for the improvement of the legal system. It is an observable fact that most American law professors formulate and propose packages of reforms within their areas of special expertise—whether in the clarification and rationalization of judicial doctrine, the adoption of new legislation, or the alteration of constitutional rules. It is sometimes frightening—given how little we really know about the operation of legal
rules and their effects—the speed with which the idea of an academic may be picked up, popularized by the media (often to the horror and astonishment of other academics), promoted by politicians, enacted into law, and then discredited. But it is unfair to blame this process on the academics, for it reveals as much about the demand for new ideas as it does about the foolishness of many of the ideas academics advance.

The scientific function comes naturally to any who aspire to make a basic contribution to the fund of knowledge to be taught and with particular ease to law teachers working within a university. “Scientific” is not used here in a methodologically restrictive sense and is meant to encompass all work of description, categorization, and analysis that is carried on with an open-minded spirit of inquiry and that attempts to test hypotheses about law and legal institutions against a factual record. It differs from the function of transmission in that the driving focus is not utility for practice—although the best preparation for practice is often fundamental scientific work; and it differs from the formulation and advocacy of reforms in that its moving spirit is not that of furthering change but that of understanding—although the soundest reforms are those based upon a deep and objective understanding of the law. In the scientific enterprise the academic lawyer has the advantage of his mastery of law and legal materials. But other fields such as history, psychology, political science, sociology, anthropology, and economics play an important role. The law as social phenomenon is not the preserve of any one department or discipline.

The coexistence of these three functions in the law school has many advantages. For the academic, they make life varied and provide an array of styles and work attractive to very different personalities. For the law student, they provide material for a wide-ranging and potentially profound legal education. For purposes of the topic here, however, they operate to confuse discussions about the nature, purpose, and intellectual integrity of legal scholarship.

One of the central crafts of the law is rhetoric, and law professors share with their colleagues at the bar an ability to clothe even the most absurd position in an aura of reasonableness. This rhetorical ability is most often deployed in the service of advocacy for proposed reforms, for it is clear that no small cachet attaches to the professor who not only advances but has adopted a proposal he has formulated. Although ideas that find a receptive climate may be adopted without extensive and profound analysis on the part of their originator, it is clear that at a minimum society requires that the person advancing them do so with vigor and confidence.

Further complicating the lines between the three functions is that in our culture a special weight is accorded to arguments supported by “scientific” authority. In the legal culture, this use of “scientific” argumentation dates at least from the Brandeis brief. Thus the vigorous and effective advocate of reform will deploy in its support whatever material of a “scientific” or seemingly scientific nature can be used. The advocate will, of course, downplay any weakness or insufficiencies in the “scientific” support for his proposal. Conversely, those who oppose the reform will be quick to seize upon any weakness in that support as a ground for opposing the reform.
I see no pressing need to give up these practices. I would prefer that more authors self-consciously attempt to signal the genre in which they are working, but I really do not expect advocates of reform to give up the rhetorical edge to be obtained by clothing their proposals in as much scientific attire as they can. An explicit understanding of the ends served by obscuring the lines between these different functions does help to explain the vehemence with which law and economics is sometimes criticized; for a critic's desire to "destroy" rather than learn from and strengthen what is positive about the law-and-economics tradition is often driven by the conclusion that law and economics has been too frequently associated with reform proposals distasteful to the critic. There is nothing quite as frustrating to such a critic as the appeal to "Pareto-optimality" with its complex, arcane, distracting, and ultimately inconclusive baggage. The principal rhetorical strategy of such critics is first, often with the assistance of the more enthusiastic partisans of law and economics, to blow law and economics up into an elaborate and imperial superstructure and then, the target well prepared for the kill, to show this superstructure to be fundamentally flawed on basic philosophical grounds.

This paper proceeds more modestly. It catalogues the analytic methods, factual insights, organizational contributions, and research agenda that law and economics has contributed to the scientific study of law. One objective of proceeding in this manner is simply to side-step as sterile all issues of what is or is not law and economics, and instead to identify and defend the basic contributions law and economics has made to the study and understanding of law. As the reader will quickly see, it is difficult to disentangle the unique contributions of law and economics from those of legal realism or even more generally from the tradition of thoughtful writing about law, which by its very nature has always been required to display sensitivity to the role of economic concerns in the practical affairs of everyday life.

I. Analytic Methods

The major analytic methods associated with law and economics are:

1. The subject to be studied is to be conceived of as a system of constraints and rewards interacting with individuals. A central objective of law-and-economics scholarship has been to analyze the interaction between a system of rules and the behavior of individuals in order to determine the effects of the rules. This conception of the agenda of legal scholarship was at the heart of legal realism, but economics, with its developed methods for thinking about the interaction between costs, returns, and individual profit-maximizing, provided an elegant analytic framework adaptable to this inquiry.¹

2. The purpose of scientific analysis is to identify the systematic component of phenomena and separate that component from the random phenomena. A generalization is useful and worthwhile even if it can explain only a portion of the behavior examined. This insight is derived from social science generally and regression methodology specifically. It was a liberating

1. For an ambitious example—some have said "too ambitious"—see Richard A. Posner, Economic Analysis of Law, 2d ed. (Boston: Little, Brown, 1977).
insight for legal scholarship, because it freed scholars from the burden of explaining every case and problem and directed their attention to the identification of general tendencies. Many of the most interesting and provocative ideas about law advanced in recent years—ideas about the tendency of common law to further efficiency, regularities in contractual relationships, and the interrelationship between criminal behavior and the criminal law—could not have been advanced and investigated without this underlying intellectual conception.

3. A strong regularity of human social behavior is behavior which serves the interests of the actor. This premise is drawn from the behavioral predicates of price theory, where its predictions have proven powerful and useful. It can be used to analyze responses to laws because it leads to the prediction that individuals will alter their behavior to avoid the costs of laws and to obtain their benefits. This prediction is a prolific generator of hypotheses for investigation—for instance, that laws that freeze rents will reduce the supply and increase the demand for rental housing; that laws that restrict entry into an industry will reduce its output; and that laws that tax or punish an activity will reduce its frequency.

The emphasis on this premise in law-and-economics work has led to criticism of the work on the ground that it inculcates amoral habits of thought. But the premise that self-interest is a strong regularity of human behavior does not logically require the hypothesis that people will behave in antisocial ways. Rather, self-interest can explain precisely why people do conform to the moral and legal norms of the social community. The gains from trade can only exist if each individual is prepared to cooperate with others, and the moral and legal norms of society can be understood as the framework which makes such trade possible.


6. Because the restriction on entry reduces the potential competition. This point only holds if the restriction on entry effectively limits the entry of additional economic resources, rather than simply firms, or when the regulation restrains efficient methods of competition by those firms in the industry. The first effect was, for instance, documented in the taxicab industry. Edmund W. Kitch, Marc Isaacs & Daniel Kasper, The Regulation of Taxicabs in Chicago, 14 J. L. & Econ. 285 (1971). The second effect was documented in the airline industry. See the summary of the literature in Stephen G. Breyer, Regulation and Its Reform (Cambridge, Mass.: Harvard Univ. Press, 1982).

4. Marginal rather than gross or average effects are the important effects to analyze in understanding human response to law. This insight is also derived from price theory where it is used, for example, to prove the counterintuitive proposition that a business that loses money will continue to operate.\(^8\) Past costs are sunk costs and have no bearing on decisions in the present. The cows-and-corn example in Coase's social-cost article is a notable example of the use of this insight:\(^9\) once the liability system has been established, it is a nonmarginal cost which does not affect production decisions. Marginal analysis is critical to understanding the output effects of price discrimination and thus the effect of antitrust laws that proscribe price discrimination.\(^10\) It is important for analyzing the effect of various transfer and tax programs, whose effect must be gauged in terms of how they affect marginal incentives.\(^11\)

5. Observed stable behavior is an indicia of an equilibrium that serves the objectives of those who sustain it. There are many versions of this idea but it is presented here in the form that has been most important for legal scholarship: as a guide to inquiry. It is a useful counter to complex predictive models including those generated from price theory, for it guards against the theorist's tendency to disregard, as either aberrational or antisocial, behavior that does not fit his predictions. The richness of the best law-and-economics scholarship reflects the tension between the predictions of rigorous price-theory models and careful investigation and analysis of actual behavior by firms, courts, or legislatures. This guide was pioneered in the antitrust area, where business phenomena such as tie-in sales, restrictive distribution agreements, and long-term contracts that did not fit the predictions of simple spot-market-price theory had been explained as monopolistic. It turned out that by analysis of the actual practices reported in the cases in light of the question "how could the business benefit from this practice?," many of these practices could be understood in light of a multiperiod competitive model.\(^12\) Similarly, phenomena such as the failure universally and uniformly to enforce criminal laws can be better understood if they are studied and analyzed in terms of the costs and benefits of criminal law enforcement rather than simply deplored as a failure of the system.\(^13\)

6. Goods and services are multidimensional, and regulation of one dimension will affect the other dimensions of the good or service. This principle is important because laws frequently affect only one aspect of a complex set of interactions. For example, economic regulation often regulates only the price at which a good or service can be sold without regulating the quality and conditions under which it is sold. Sellers will

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8. Because these losses are accounting losses on fixed capital that has no better use.
respond to a constraint on price by changing one of the quality parameters. Only if all parameters within the control of the seller are regulated, can these effects be controlled. When this principle is used in conjunction with the earlier principles, it can yield subtle hypotheses. For instance, safety regulation will not increase safety, because the existing amount of "safety" reflects a preexisting equilibrium and if one input to safety is increased by law, the participants will increase other inputs to risk in order to return toward the previous equilibrium.\textsuperscript{14} In utility regulation, where many parameters of the service are regulated but price is based on a formula related to investment, this insight leads to predictions about the interaction between output regulation and investment decisions in the form of the Averch-Johnson-Wellisz hypothesis.\textsuperscript{15} This insight also helps to explain why particular anticrime measures may have little impact on crime rates.

7. In evaluating the effects of laws, the multiparty, private transactional response is important. It is important to look beyond the reactions of a single individual to a rule of law and look at the systematic responses open to groups of individuals. If zero transaction costs are assumed, the Coase theorem comes into play and generates the corollary that law will not matter.\textsuperscript{16} Although the zero-transaction-cost assumption is unrealistic, the theorem suggests that one should be wary of concluding that laws have large effects where the parties affected are in continuing and regular bargaining relationships with each other. Since they have already incurred the costs of bargaining, the marginal cost of adding a new topic—the new law—to their agenda is low, and it is plausible to expect complex multiparty arrangements to offset its effects. For example, one should expect that in response to a tax the parties involved in the taxed transaction will attempt to rearrange the transaction so as to reduce the amount of the tax. Workers and employers will respond to an income tax by converting what would otherwise be income into an expense. Or affected parties may cooperate in the operation of black markets or leave the jurisdiction.

8. In evaluating any market or regulatory arrangements, it is important to compare the arrangement being evaluated against other viable institutional alternatives. It is a simple intellectual matter to demonstrate the imperfections of markets and administration, but it is an intellectual exercise of little interest. Since perfection is not attainable, one should search for the best available.

9. Law reports and case records contain useful and carefully recorded information about private economic practices that is difficult to find

\textsuperscript{14} Sam Peltzman, The Effects of Automobile Safety Regulation, 83 J. Pol. Econ. 677 (1975).

\textsuperscript{15} The effect is the response of the firm to a constraint on its prices based upon rate of return where the firm responds by increasing its capital base. Harvey Averch & Leland L. Johnson, Behavior of the Firm under Regulator\textsuperscript{y} Constraint, 82 Amer. Econ. Rev. 1052 (1962); Stanislaw H. Wellisz, Regulation of Natural Gas Pipeline Companies: An Economic Analysis, 71 J. Pol. Econ. 30 (1963).\textsuperscript{16} Since the effects law has will be costlessly overcome by agreements among the affected parties, returning the arrangements to those they preferred in the first place. From the point of view of a legal scholar, it is unfortunate that most of the literature on the Coase theorem has focused on the hypothetical, tractable world where law does not matter rather than the actual world with which the law struggles.
elsewhere. The idea of going behind the opinion to use it and the associated record for the purpose of illuminating actual practices was pioneered in the antitrust area, but it has now spread to numerous fields.\textsuperscript{17}

10. The study of legal history and comparative law is important, because significant differences in the structure of legal institutions will probably only appear where there are significant differences in the cost conditions facing the society. Thus fifty-state American studies may only identify differences that are so small that they do not matter—they are essentially the random component of the process output—while obscuring the dominant and important part of the process. If Massachusetts and Montana are alike in the things that matter, then we would expect them to disagree only on things that do not matter. To understand the really important aspects of our own legal system, we may need the comparative mirror of law generated by a very different culture. This leads to an agenda of study and analysis of institutions as diverse as the medieval commons,\textsuperscript{18} property rights in primitive societies,\textsuperscript{19} and the organization of socialist economics.\textsuperscript{20}

Legal scholars have, of course, long realized the importance of historical and comparative studies. But these studies have been largely descriptive. Law and economics provides an analytic framework that can provide unifying direction to comparative and historical work. For instance: (a) Contractual relations have had varying scope within societies. What social variables account for the varying scope accorded to social ordering through contract? (b) What effects have different forms of economic ordering had on the productivity of societies? (c) Do legal institutions operate systematically to enhance human welfare; do they operate to protect and maintain the position of those in political power; do they have no effect; or should they be understood in some entirely different framework? If these questions should be answered differently in different societies, or at different times, what accounts for these differences?

\section*{II. Factual Insights}

Law and economics has also been associated with a series of factual insights that have been important to contemporary American legal scholarship.

1. Markets have strong efficiency properties. Using only price theory it is possible to argue that markets are efficient, or, conversely, that they are beset by fatal imperfections. How well markets operate in practice is a question of fact. Are the theoretical imperfections important in practice or are they


relatively unimportant? The rise of law and economics has been correlated with a change in the intellectual climate, which has become more receptive to the view that markets are an effective form of social organization in many situations. This change in the general intellectual climate has made academic lawyers more interested in the private-law structures that support the operation of markets and more receptive to policy approaches that use private-market institutions. This has in turn made economics more relevant to law.

Law and economics has itself made only a small contribution to this change. The scholars of the 1980s who viewed markets as producing a situation in which millions were idle and hungry could hardly have been expected to have faith in the inevitable ordering properties of the "invisible hand." Nor did their background include any extensive experience with large-scale government economic management. The Interstate Commerce Commission, which was their most ambitious domestic precedent, was timid by modern standards of economic intervention. No wonder they said to themselves, "There must be a better way."

By contrast, the current generation of scholars has seen the power of markets to generate private production in the post-World War world and experienced first-hand the imperfections of bureaucratic management. On an intellectual level, it has been possible to place the Depression in historical perspective and to come to understand the role of the Federal Reserve Board in sustaining and extending the long downward economic spiral of the early '30s. 21

Law and economics has played a role in this large and important transformation of perceptions in one respect. The antitrust-industrial-organization work has shown that many of the market failures attributed to barriers to entry, predatory practices, and monopoly extension are not in practice significant problems. 22

It is this element of law and economics that probably accounts for the view of some that it is an intellectual movement hopelessly tainted by ideology. An appreciation of the power of markets to release human energies for public ends inevitably leads to nonsocialist prescriptions. The interesting thing is that the efficiency properties of markets are now so widely appreciated that this finding is seldom challenged. In the days of classic socialist theory, it was possible to argue that the emerging scale of production was so large that all markets would be dominated by monopolies. Ironically, the very technological progress that made large-scale production efficient also led to means of transportation and communication that vastly expanded the geographic scope of markets. This has forced socialist political theorists to abandon price theory to the liberals.

2. Much social behavior can be illuminated through rigorous use of self-

interest-maximization models, including such areas of noncommercial behavior as political behavior,\textsuperscript{23} family behavior,\textsuperscript{24} and criminal behavior.\textsuperscript{25}

3. Private-law rules matter and involve policy issues as fundamental and important as public-law rules. One of the reasons that law and economics has been so well received in law schools is that it has addressed in an interesting way the concerns of the private-law lawyer—the rules of contracts, torts, and property.\textsuperscript{26} For the preceding thirty years public law had been on the rise in American law schools and had attracted the most ambitious minds. In contrast, private law came to be viewed as narrow and technical. Law and economics placed private law in a larger policy context and generated vigorous literatures on liability rules and the nature and structure of contracting and property systems. Since private law does in fact matter, this more rigorous and systematic method of approaching issues of the significance of private-law rules was a useful corrective.

4. Economic regulation often has effects which are adverse to social welfare and is often imposed and maintained for the purpose of protecting the interest of the firms regulated. Law and economics, and particularly the industrial-organization literature associated with law and economics, documented a stunning series of failures in the structure of the economic regulation that lay at the heart of the New Deal’s faith in economic management. These demonstrations focused on agencies that restricted entry (airlines, trucks, communications common carriers), restricted pricing freedom (railroad, utility regulation, Robinson-Patman Act), or prevented the creation of private property rights (broadcast regulation).\textsuperscript{27} In case after case it was possible to show, on the basis of rather elementary price theory and economic data, that these supposedly “scientific” regulatory regimes resulted in a social loss, protected politically powerful groups, and did not have the efficiency effects claimed for them.


\textsuperscript{24} Gary S. Becker, A Treatise on the Family (Cambridge, Mass.: Harvard Univ. Press, 1982).


III. Institutional Innovations

Law and economics has also been associated with a set of institutional innovations that have had a significant impact on legal scholarship.

1. The introduction of unifying themes. Legal scholarship in its present state has many of the characteristics of descriptive botany. One legal scholar knows a great deal about corporations, and another knows about criminal laws. When they meet, they have little of professional interest to discuss for neither knows anything about the other's field. Each works alone and in isolation, except for recurrent and elaborate discussions of the sporting scene. Traditional jurisprudence, although supposedly the field of the philosophy and science of law, has been in practice a separate field of little relevance to legal scholarship. Law and economics introduced a set of methods and concerns that cut across fields and highlighted some of the central unities of the law. This has enabled people in different substantive fields to talk to one another and to identify and share common concerns.

2. Law and economics, largely through the conferences and programs run by Henry Manne, has provided occasions for legal scholars from different law schools who share common interests and concerns to meet and discuss topics of common interest. The importance of these types of formal and informal exchange has long been recognized in other fields, but they have come late to law. Many of the current generation of law teachers have obtained a sense of professional identity, knowledge of a larger community of interest, and access to enhanced professional skills through programs associated with law and economics.

3. Professionally edited journals have entered the law-school world through the example of the Journal of Law and Economics and the Journal of Legal Studies, published by the Law and Economics Program at the University of Chicago Law School. A system of student-edited journals had a strong and clear message about the importance of legal scholarship. The discontinuities and lack of consistency caused by ever-changing student editorial boards meant that law reviews could never acquire distinctive character or systematically develop and support a particular line of inquiry or style of work. No serious field of scholarship uses such a system of publication, and in this respect law and economics has brought higher standards of scholarship to the law schools.

IV. The Paradox of Efficient Markets

Law and economics has identified an important problem that is likely to remain at the center of the research agenda for a long time. In brief, it is the clarification and explanation of the paradox of efficient markets.

The standard explanation offered for the efficiency of markets is that they bring together in continuing interaction decision makers who will be rewarded in proportion to their correct decisions and who will lose in proportion to their errors. Each trader and investor deals in property rights which confer upon him the value of the future income stream of the property. To the extent he enhances the value of that stream, he benefits; to the extent he impairs it, he loses. This symmetry of reward and loss creates
an environment that favors decisions that optimize the decider’s wealth, and
through an extended but elegant line of logic it can be demonstrated that
these are the same decisions that optimize the wealth of the market
participants as a group.

There are many problems with this story, and it is those problems that
provide the agenda for frontier research in law and economics. For example:
many market participants voluntarily enter into long-term institutional
arrangements either through contracts or the creation of firms that put
individuals in the position of making decisions whose consequences will be
borne by others. When this is done, it is evidence that the firm or contract is
more beneficial to the parties than the alternative market arrangement, but
how can that be so? It can only be so if there are devices within the firm or
contracting arrangement that control these “imperfections.” What are those
devices and how do they work?

1. If the “correct” decisions of market actors make markets efficient, then it
is possible for third parties to free-ride on the efficiency of markets (for
example, by buying an index fund). Since “correct” decisions are the
product of investment in the skills and information necessary to make them,
this possibility—free-riding—suggests that there is underinvestment
in information. But markets do have observable efficiency properties. How are
these problems dealt with?

2. Political actors have power to make decisions free of market sanctions.
Yet many legal systems, over long periods of time, have supported market
systems. What pressures operate on the political system to cause this to
happen; and what institutions and arrangements are used to sustain this
outcome?

These kinds of questions have produced a vigorous, important, and
uncertain literature on topics as varied as the economics of information, the
theory of the firm, and public choice. Work on these topics requires
both careful theory and thoughtful empirical study. The inherent tensions of
the paradox have attracted first-rate minds and resulted in much of the most
interesting and insightful contemporary work in law.

The discussion so far has emphasized the significant methodological,
empirical, and organizational contributions that law and economics has

1978).

29. See George J. Stigler, The Economics of Information, 69 J. Pol. Econ. 213 (1961), reprinted in
The Organization of Industry 171 (Hounwood, Ill.: Richard D. Irwin, 1968); Herbert A.
Simon, Administrative Behavior, 3d ed. (New York: Macmillan, 1976); Oliver E. Williamson,
Markets and Hierarchies: Analysis and Antitrust Implications, A Study in the Economics of
Internal Organization (New York: Free Press, 1975); Edmund W. Kitch, The Law and
Economics of Rights in Valuable Information, 9 J. Legal Stud. 683 (1980); Edmund W.

30. Ronald H. Coase, The Nature of the Firm, 4 Economica (n.s.) 86 (1937); Williamson, supra
note 29; Michael C. Jensen & William H. Meckling, Theory of the Firm: Managerial
Behavior, Agency Costs and Ownership Structure, 3 J. Fin. Econ. 35 (1976); Eugene F.
Fama, Agency Problems and the Theory of the Firm, 88 J. Pol. Econ. 288 (1980); Oliver E.
Williamson, The Modern Corporation: Origins, Evolution, Attributes, 19 J. Econ. Lit. 1537

made to the scholarship of law. Surely they are important enough to support the following conclusions: Scholars of the law can enrich their work by familiarity with its methods and its literature, and indeed most scholars now working in American law schools (and an increasing number abroad) do just that. There is nothing about law and economics to suggest that it is a short-run development that has run its course. The issues posed by law and economics are fundamental and interesting. The first fifty years—to age the activity generously—have largely consisted of a deck-clearing operation. It is not unreasonable to hope that the next fifty will witness significantly enhanced understanding of the institutions of the law built upon that foundation.

This essay opened with the suggestion that the principal "intellectual foundation" of law and economics was its success vis-a-vis the competition. Yet there has been no discussion of the competition. The reason is that there is none that offers anything like the range of methods, insights, and institutions that law and economics has, nor is there any competition that has been associated with a comparable quantity and quality of useful scholarly work on law. The treatise-restatement tradition that lies at the heart of the excellence of the traditional American law school involves work of systematic description, organization, and rationalization that is complementary to, but not competitive with, the concerns of law and economics. Members of the critical legal studies movement are eager to proclaim themselves an alternative, but even a sympathetic view has to concede that their alternative has yet to find even a clear self-definition—except, perhaps, a dissatisfaction with law and economics.

Much work in law and economics, of course, attempts to move beyond the core discussed here to expand the range and power of the enterprise. Quite properly so. The intellectual foundations of the core are sound. It is time to build.