

Seminar
Crime, Punishment and Economics

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The purpose of this seminar is to understand from an eclectic perspective the precise role economics department, economic theories, journals and faculties, have played in *Crime and Punishment* studies since the 1970s.

Course Requirements: Every student is expected to do all the readings, attend all the classes, and participate in discussion. For class 3 and 4, voluntary students will present in front of the rest of the class one of the reading. For class 2, three students will present different aspects of the required reading.

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Class 1. Framework

I will lecture on

- the three main paradigm of criminology prior to the 1960s (Abnormality, Sociality and Radicality) and
- the proto-economic reasoning on crime before 1950, in utilitarianism (Beccaria, Bentham, J.S. Mill) and neo-marxist thought (notably Rusche and Kirchheimer)

Class 2. Model

In this class we will discuss Gary Becker’s Model “On crime and Punishment” (1974) and try to answer the following questions:

- What is Gary Becker’s definition of “crime”?
- What is Gary Becker’s “Case for fines”?
- What role do probability and severity of punishment play in Gary Becker’s model?

Class 3. Controversy

In this class we will discuss the rich controversy around Kessler and Levitt (1999) study of California’s penal reform. Apart from Levitt’s original paper, we will discuss the symposium held by the *Criminology and Public Policy* review. Students should at least read Webster and al. (2006), Levitt (2006) and Raphael (2006) and try to answer the following questions:

- What is the purpose and method of Kessler and Levitt’s (KL) original article?
- What are the main critiques of their claim?

- On what points do KL and their critics ultimately agree? What are their most crucial disagreements?

Class 4. Retrospective

In this class we discuss the provocative paper by Dills, Miron and Summer “What do Economists know about Crime?” (2008) and the equally provocative response to this paper by Phillip Cook (2008). We will try to answer the following questions:

- What have been the main claims economists have made about crime in the last 40 years?
- What are the main issues they face to make those claims?
- What is the best way going forward?

A Dynamic Approach to Law & Economics

Pierre Garelo, Pr.
GREQAM

June 2017

General references :

MUST READ **A PLUS**

Cooter, Robert and Thomas Ulen *Law and Economics* (2d ed.), Reading, Mass. Addison-Wesley Inc.

Hayek, Friedrich *Law, Legislation and Liberty, Vol.1: Rules and Order*, Routledge & Kegan Paul, London and Henley, 1973

Epstein, Richard A., *Simple Rules for a Complex World*, Harvard University Press, 1995. Chapter 5

1. COMPETING PARADIGMS IN ECONOMICS

- Benefits and costs of an interdisciplinary approach
- The competition between paradigms in economics and its impact on Law and Economics
- Law, Economics and the knowledge problem

References:

- Hayek, *op.cit.*, Chapter 2
- Hayek, F.A. "The Use of Knowledge in Society", *American Economic Review*, xxxv, No. 4 (September 1945), 519-30. Reprinted in Hayek, F.A., *Individualism and Economic Order*, The University of Chicago Press: Chicago and London, 1948.
- Cooter and Ulen, Chapter 1., *op. cit.*
- Stiglitz, Joseph "Market Socialism and Neoclassical Economics", in Bardhan and Roemer; 1994, Oxford UP
- For fun: https://www.youtube.com/watch?v=gsJrZN_PYgA
- "Fundamental theory of institutions: A lecture in honor of Leo Hurwicz" by Roger B. Myerson
- George Stigler (1961), "The Economics of Information," *Jornal of Political Economy*.<

2. THE MARKET AS A DISCOVERY PROCESS

- Static v. Dynamic view of the market
- Different understanding of competition
- A brief history of competition law
- The impact of general equilibrium theorizing and the development of the Rule of Reason
- Is the Rule of reason reasonable? Competition as a discovery process

References :

- Kirzner, Israel "Entrepreneurial Discovery and the Competitive Market Process: An Austrian Approach", *Journal of Economic Literature*, Vol. 35, 60-85, 1997
- Kirzner, Israel *How the Market Works*, especially chapters 3 and 4, Institute of Economic Affairs (1997/2000) Downloadable at <https://iea.org.uk/publications/research/how-markets-work-disequilibrium-entrepreneurship-and-discovery>
- Kovacic, W.E. and Carl Shapiro "Antitrust Policy: A Century of Economic and Legal Thinking", *Journal of Economic Perspective*, Vol. 14, N.1, 2000
- Kirzner, Israel, "The Perils of Regulation: A market process Approach", in *idem, Discovery and the Capitalist Process*, The University of Chicago Press: Chicago and London, 1985. 119-140
- Pierre Garello, "Reflections on the Nature of Competition Law", in *Internationalization of the Law and its Economic Analysis. Festschrift für Hans-Bernd Schäfer zum 65. Geburtstag*, Wiesbaden: Gabler 2008, 767 Seiten (editors : Thomas Eger, Jochen Bigus, Claus Ott and Georg von Wangenheim)
- Stefan Voigt, "The Economic Effects of Competition Policy – Cross-Country Evidence Using Four New Indicators" University of Kassel and ICER, Torino

3. LAW AS A DISCOVERY PROCESS

- Those who don't see the knowledge problem don't realize that there exists different types of order
- Law and Legislation initially pertain to different orders, work differently and have different goals
- How the Law evolves
- Today Legislation prevails on Law
- Explanations to the decline of the Law

References:

- Schwartzstein, Linda "An Austrian Economic View of Legal Process", *Ohio State Law Journal*, vol.55, 1944 (only 1062-1078)
- Christainsen, *Cato Journal*
- Hayek, *op.cit.*, Chapters 2 and 4
- Norman Barry, *The Tradition of Spontaneous Order: A Bibliographical Essay*

4. PROPERTY LAW

- Property rights: the most basic institution
 - i. Their role in an open society (cf. definition of the market)
 - ii. Dynamic virtues v. efficiency
- The law is a spontaneous order
 - i. Their polymorphic nature of property rights
 - ii. How they emerge
 - iii. Private v. public goods ?
- Specific topics
 - i. The difficult case of Intellectual Property Rights

References:

- Demsetz, Harold "Towards a Theory of property Rights"
- Ronald Coase, "The Lighthouse in Economics", JLE 1974
- Olstrom, Elinor "Coping with Tragedies of the Commons", Nobel prize lecture
- Barzel, Yoram , *Economic Analysis of Property Rights*, Cambridge U.P., Cambridge, 1989, Chapters 1 and 2
- Cooter et Ulen, *op.cit.*, chapter 8

5. CONTRACT LAW

- From Statute to Contract: Contract law as a discovery process
- The neoclassical approach to contract (Following Cooter and Ulen)
- The Austrian approach (Wonnell, Epstein, Garelo)
- The first one advocates greater regulation of the contract process
- The second one focuses on the "meta-rules" that will frame the decentralized designing of contracts (the rules that will govern specific interactions between specific individuals)
- The first one is useful to understand **contractual technics**

References :

- Cooter and Ulen , *op. cit.* chap. 6
- Epstein, Richard A., *Simple Rules for a Complex World*, Harvard University Press, 1995. Chapter 4
- Pierre Garelo, IRLE

6. TORT LAW (AND ENVIRONMENTAL LAW)

- The neoclassical approach is looking for the rule that minimizes social costs. Negligence rule is defined on the basis of a cost/benefit analysis of the situation (cost of taking care and benefit from taking care).
- The "dynamic approach" will be based on the notion of fault understood as what runs against legitimate expectations. Some Austrians (Epstein, Rizzo), however, have a preference for the simplicity of strict liability.
- We also have a new look at Coase's paper on Social Costs, linking it to the knowledge problem

References:

- Epstein, Richard, *Simple Rules for A Complex World*, chapter 5 Torts
- Mario Rizzo, "Law amid Flux," JLS 1980
- Coase, Ronald, "The Problem of Social Cost", *The Journal of Law and Economics*, 3, 1960
- Coase, Ronald, "Looking for Results", *Reason*, January 1997
- Dworkin, Ronald "Why Efficiency: A response to Professors Calabresi and Posner" *Hofstra Law Review*, 8 (1980)

7. ECONOMIC THEORIES OF JUSTICE AND THE LAW

- Contrasting the way neoclassical economics see the link between justice and efficiency with the way you can conceive that same link in a more dynamic approach.

- In standard economics the two issues can be separated: you first look for efficiency and then add on eventually some consideration of justice (keeping on mind Arrow's impossibility theorem)
- In a dynamic-Austrian approach it is essential to protect legitimate expectation of you wish to obtain an order and the economic progress that goes with it. But that means that the prevailing notion of justice (as defined by legitimate expectations) is key to efficiency.

References:

- Rizzo, Mario "The Mirage of Efficiency", *Hofstra Law review*
- Coase interviewed in *Reason Magazine*
- Dworkin, Ronald "Why Efficiency: A response to Professors Calabresi and Posner" *Hofstra Law Review*, 8 (1980)
- Bruce L. Benson, *The Enterprise of Law*, Pacific Research Institute, 1990
- Rawls, John, *A Theory of Justice*, chap. 2