

Economic Analysis of Public Law– EMLE

Course description

This course offers an introduction to the economic analysis of public law. The course focuses on four main topics: politics, regulation, enforcement, and behavioral law and economics. In each topic, we will present key insights that shed light on the incentives given to the actors involved, including politicians, regulators and regulated entities, law enforcers, and criminals. This will enable us to understand better both the demand for and the supply of public law. The material used to explain the main concepts of the course will include directives and regulations of the European Union alongside legislative materials from Israel, Germany, and other countries.

Topics

1. Introduction
2. Economics of Politics
3. Economics of Regulation
4. Economics of Enforcement
5. Behavioral Economics: A New Justification for Regulation?

Background Literature:

- ANTHONY OGUS, REGULATION: LEGAL FORM AND ECONOMIC THEORY (Hart, 2004).
- DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011) [Link](#).
- DENNIS MUELLER, PUBLIC CHOICE III (Cambridge Press, 2003).
- EYAL ZAMIR & DORON TEICHMAN, BEHAVIORAL LAW AND ECONOMICS (Oxford University Press, 2018)
- ROBERT COOTER & MICHAEL D. GILBERT, PUBLIC LAW AND ECONOMICS (2022), [Link](#).

Topic 1: Introduction

Suggested reading:

- COOTER & GILBERT, pages 1-7.
- Israeli Act of Criminal Procedure, 1982, Art. 11 and Art. 62.
- German Code of Criminal Procedure, Section 152 and Section 374, [Link](#).

Topic 2: The Economic Theory of Politics

Suggested reading:

- André Blais & Stéphane Dion, *Are Bureaucrats Budget Maximizers? The Niskanen Model & its Critics*, 22 POLITY 655 (1990).
- Anne O. Krueger, *The Political Economy of the Rent-seeking Society*, 64 AM. ECON. REV. 291 (1974).

- Gordon Tullock, *The Welfare Costs of Tariffs, Monopolies, and Theft*, 5 ECON. INQUIRY 224 (1967).
- Richard A. Posner, *What do Judges and Justices Maximize? (The Same Thing Everybody Else Does)*, 3 SUP. CT. ECON. REV. 1 (1993).

Optional:

- Barry R. Weingast & Mark J. Moran, *Bureaucratic Discretion or Congressional Control? Regulatory Policymaking by the Federal Trade Commission.*, J. POL. ECON. 765 (1983).
- Diana W. Thomas & Michael D. Thomas, *George Stigler's Theory of Economic Regulation at 50-introduction to a Special Issue*, 193 PUB. CHOICE 1 (2022).
- Gary J Miller & Terry M. Moe, *Bureaucrats, Legislators, and the Size of Government*, 77 AM. POL. SCI. REV. 297 (1983).
- Mark Hallam & Astrid Prange, *German Lawmakers Reject 'Opt-out' Organ Donor Bill*, DW (Jan. 16, 2020), [Link](#)
- MUELLER, chapters 15-16.
- Roger D. Congleton, *The Median Voter Model*, in THE ENCYCLOPEDIA OF PUBLIC CHOICE 707 (Springer, 2004).
- Sam Peltzman, *George Stigler's Contribution to the Economic Analysis of Regulation*, 101 J. POL. ECON. 818 (1993).
- Terry M. Moe, *Toward a Theory of Public Bureaucracy, Organization theory: From Chester Barnard to the present and beyond*, in PERSPECTIVES ON PUBLIC CHOICE 455 (Denis Mueller ed., 1995).

Topic 3: Regulation

Suggested reading

Legislation:

- EU Proposal for a regulation of Markets in Crypto-assets ("MICA) – consolidated version, [Art. 1\(3\) and Art. 91](#), [Link](#)
- U.S. Presidential Executive Order 14067 on "Ensuring Responsible Development of Digital Assets", [Link](#)
- Israel Penal Law, [§34M\(2\)](#), [Link](#)
- EU Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, [para. 29](#), [Link](#)

Articles:

- Anthony Ogus, *Regulation Legal Form and Economic Theory* 29-54 (Hart, 2004).
- Eli Salzberger, *A Possible Regime Change in Israel*, VERFASSUNGSBLOG (Jan. 17, 2023), <https://verfassungsblog.de/regime-change-israel/>
- Hadar Jabotinsky & Roe Sarel, *How Crisis Affects Crypto: Coronavirus as a Test Case*, 74 HASTINGS L.J 433 (2023), [Link](#).
- Roe Sarel et al., *Globalize Me: Regulating Distributed Ledger Technology*, 56 VAND. J. TRANSNAT'L L. 435 (2023), [Link](#).

- Steven Shavell, *Liability for Harm versus Regulation of Safety*, 13 J. LEGAL STUD. 357 (1984). [Link](#).

Optional

- Johan Den Hertog, *General Theories of Regulation*, in ENCYCLOPEDIA OF LAW & ECONOMICS (B. Bouckaert and G. de Geest eds., 1999), [Link](#).
- JOEL TRACHTMAN, THE ECONOMIC STRUCTURE OF INTERNATIONAL LAW (Harvard Press, 008).
- Oliver Williamson, *The Politics and Economics of Redistribution and Efficiency*, in THE MECHANISMS OF GOVERNANCE (Oxford University Press, 1996).
- Rosolino A. Candela & Vincent Geloso, *Why Consider the Lighthouse a Public Good?*, 60 INT'L REV. L. & ECON., Dec. 2019, at 1 (2019).
- Ronald Coase, *The Regulated Industries – Discussion*, 54 AM. ECON. REV. 194 (1964).

Topic 4: Optimal Enforcement I

Suggested Reading:

- Aaron Chalfin & Justin McCrary, *Criminal Deterrence: A Review of the Literature*, 55 J. ECON. LIT. 5 (2017), [Link](#).
- Becker, G. S. (1968). Crime and Punishment: An Economic Approach. *Journal of Political Economy*, 76(2), 169-217. [Link](#).
- ROBERT COOTER & THOMAS ULEN, LAW AND ECONOMICS (6th edition, 2016), Chapter 12 (pp. 454-484) and Chapter 13 (pp. 485-532), [Link](#).
- Roe Sarel, *Crime and Punishments in Times of Pandemics*, 54 EUR. J. L. & ECON. 155 (2022).

Optional:

- Richard Craswell & John E. Calfee, *Deterrence and Uncertain Legal Standards*, 2 J. L. ECON. & ORG. 279 (1986), [Link](#).
- John J. Donohue & Steven D. Levitt, *The Impact of Legalized Abortion on Crime over the Last Two Decades*, 22 AM. L. & ECON. REV. 241 (2020).
- Daniel Epps, *The Consequences of Error in Criminal Justice*, 128 HARV. L. REV. 1065 (2014), [Link](#).
- Henrik Lando, *Does Wrongful Conviction Lower Deterrence?*, 35 J. LEGAL STUD. 327 (2006), [Link](#).
- Matteo Rizzolli & Luca Stanca, *Judicial Errors and Crime Deterrence: Theory and Experimental Evidence*, 55 J. L. & ECON. 311 (2012), [Link](#).
- James Andreoni, *Reasonable Doubt and the Optimal Magnitude of Fines: Should the Penalty Fit the Crime?*, 22 RAND J. ECON. 385 (1991), [Link](#).

Topic 5: Behavioral Law & Economics

Suggested Reading:

- Amos Tversky & Daniel Kahneman, *Judgment under Uncertainty: Heuristics and Biases*, 185 SCIENCE 1124 (1974).
- Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, 211 SCIENCE 453 (1981), [Link](#).

- Chris Guthrie et al., *Inside the Judicial Mind*, 86 CORNELL L. REV. 777 (2000), [Link](#).
- Birte Englich et al., *Playing Dice with Criminal Sentences: The Influence of Irrelevant Anchors on Experts' Judicial Decision Making*, 32 PERS. & SOC. PSYCHOL. BULLETIN 188 (2006), [Link](#).

Optional:

- Anne van Aaken & Roee Sarel, *Framing Effects in Proportionality Analysis: Experimental Evidence* (2022), [Link](#).