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Chapter 1 : Law and Economics | Internet Encyclopedia of Philosophy

Game Theory and the Law (Economic Approaches to Law) by Eric B. Rasmusen (Editor) Be the first to review this item.

Depending on the model, various other requirements or assumptions may be necessary. Game theory has a wide range of applications, including psychology, evolutionary biology, war, politics, economics, and business. Despite its many advances, game theory is still a young and developing science. Impact on Economics and Business Game theory brought about a revolution in economics by addressing crucial problems in prior mathematical economic models. For instance, neoclassical economics struggled to understand entrepreneurial anticipation and could not handle imperfect competition. Game theory turned attention away from steady-state equilibrium toward the market process. In business, game theory is beneficial for modeling competing behaviors between economic agents. Businesses often have several strategic choices that affect their ability to realize economic gain. For example, businesses may face dilemmas such as whether to retire existing products or develop new ones, lower prices relative to the competition, or employ new marketing strategies. Economists often use game theory to understand oligopoly firm behavior. It helps to predict likely outcomes when firms engage in certain behaviors, such as price-fixing and collusion. Types of Game Theory Although there are many types e. Cooperative game theory deals with how coalitions, or cooperative groups, interact when only the payoffs are known. It is a game between coalitions of players rather than between individuals, and it questions how groups form and how they allocate the payoff among players. Noncooperative game theory deals with how rational economic agents deal with each other to achieve their own goals. The most common noncooperative game is the strategic game, in which only the available strategies and the outcomes that result from a combination of choices are listed. A simplistic example of a real-world noncooperative game is Rock-Paper-Scissors. Consider the example of two criminals arrested for a crime. Prosecutors have no hard evidence to convict them. However, to gain a confession, officials remove the prisoners from their solitary cells and question each one in separate chambers. Neither prisoner has the means to communicate with each other. Officials present 4 deals: If both confess, they will each receive a 5-year prison sentence. If prisoner 1 confesses but prisoner 2 does not, prisoner 1 will get 3 years and prisoner 2 will get 9 years. If prisoner 2 confesses but prisoner 1 does not, prisoner 1 will get 10 years and prisoner 2 will get 2 years. If neither confesses, each will serve 2 years in prison. The most favorable strategy is to not confess.

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Chapter 2 : International legal theories - Wikipedia

Game Theory and the Law is a collection of previously published articles in which ideas from game theory and the economics of asymmetric information are applied to legal issues. Game theory's method is to simplify a situation by describing it in terms of players, actions, payoffs, after which the players' strategic interactions can be.

Because of the overlap between legal systems and political systems, some of the issues in law and economics are also raised in political economy , constitutional economics and political science. For example, research by members of the critical legal studies movement and the sociology of law considers many of the same fundamental issues as does work labeled "law and economics," though from a vastly different perspective. The one wing that represents a non-neoclassical approach to "law and economics" is the Continental mainly German tradition that sees the concept starting out of the governance and public policy Staatswissenschaften approach and the German Historical school of economics ; this view is represented in the Elgar Companion to Law and Economics 2nd ed. Origin and history[edit] As early as in the 18th century, Adam Smith discussed the economic effects of mercantilist legislation. However, to apply economics to analyze the law regulating nonmarket activities is relatively new. Hayek in the U. Attorney General in the Ford administration. He died September 11, , at his home in Los Altos Hills, California, ten days before his rd birthday. In the early s, Henry Manne a former student of Coase set out to build a center for law and economics at a major law school. He began at Rochester, worked at Miami, but was soon made unwelcome, moved to Emory, and ended up at George Mason. The last soon became a center for the education of judgesâ€”many long out of law school and never exposed to numbers and economics. Manne also attracted the support of the John M. Olin Foundation , whose support accelerated the movement. Today, Olin centers or programs for Law and Economics exist at many universities. Positive and normative law and economics[edit] Economic analysis of law is usually divided into two subfields: So, for example, a positive economic analysis of tort law would predict the effects of a strict liability rule as opposed to the effects of a negligence rule. Positive law and economics has also at times purported to explain the development of legal rules, for example the common law of torts, in terms of their economic efficiency. Normative law and economics[edit] Normative law and economics goes one step further and makes policy recommendations based on the economic consequences of various policies. The key concept for normative economic analysis is efficiency , in particular, allocative efficiency. A common concept of efficiency used by law and economics scholars is Pareto efficiency. A legal rule is Pareto efficient if it could not be changed so as to make one person better off without making another person worse off. A weaker conception of efficiency is Kaldor-Hicks efficiency. A legal rule is Kaldor-Hicks efficient if it could be made Pareto efficient by some parties compensating others as to offset their loss.

Chapter 3 : - Game Theory and the Law (Economic Approaches to Law) by Eric B. Rasmusen

BRAND NEW, Game Theory and the Law, Eric B. Rasmusen, "Game Theory and the Law" is a collection of previously published articles in which ideas from game theory and the economics of asymmetric information are applied to legal issues.

References and Further Reading 1. Law as an Autonomous Practice Most traditional theories of jurisprudence look to uncover the essential or definitive aspects of the institution of law. While these two differ as to their definition of law and legal reasoning, they agree upon some basic central assumptions, determining the conclusions that two philosophical investigations with largely the same aims, can reach. Because of this it is important to acknowledge some of the assumptions that are held in common by these jurisprudential stances. First, both theories agree upon the conceptual nature of jurisprudence. Both agree that it is important for a philosophical theory of law to define the core aspects of proper legal practice in order to fulfill the function of philosophical jurisprudence. In fact, much philosophical discussion of law assumes that such a characterization is the essential aim of jurisprudence. Second in order to arrive at a properly analyzed concept of law, both legal positivism and law as integrity are best constructed from specific techniques of analytic and linguistic philosophy. These techniques include the investigation and clarification of the way people commonly speak about law and careful parsing of social practice that separate the legal from the non-legal. The third common assumption is that the best way to understand legal practice is to understand the necessary and sufficient qualities that make some rule or statement into a law. Once such a set of necessary and sufficient conditions is identified or approximated it is thought that the essential aspects of particularly legal practices have been understood. Instead of following this path, theorists within the law and economics movement have attacked the study of law from another angle. Rather than trying to identify unique conceptual aspects of law, what is advocated is an investigation of legal practices through the means of economic analysis. The conclusion offered is that legal practice is best understood through its function as a social tool promoting economic efficiency, in common with other social practices. The conclusion offered is that legal practice is best described by its purported function as a social tool aiming at the promotion of economic efficiency - something it has in common with other social practices. Law as a Tool to Encourage Economic Efficiency So, instead of looking for the unique and defining features of law, the practitioner of law and economics looks at law as a social tool and tries to evaluate it functionally. What is emphasized is not its uniqueness as an institution, but its place within the general and common economic structure of society. The descriptive claim most often associated with law and economics is that legal practices are best characterized as tools for encouraging economically efficient social relations. To understand this claim it is important to examine some of the basic concepts used in models of economic reasoning. Basic Concepts in Economic Reasoning Essential to an understanding of the law and economics movement is a set of fundamental concepts. The most central assumption in economics is that human beings are rational maximizers of their individual satisfactions, and, in turn, respond to incentives. A rational maximizer of personal satisfaction adjusts means to ends in the most efficient way possible. It is important to realize that economics, as understood here, is not restricted to analysis of monetary issues; there are nonmonetary as well as monetary satisfactions. Every potential satisfaction is implicated in the calculus of economic satisfactions and therefore can be investigated according to economic or means-end rationality and the trade-off of costs and benefits. Normally what is aimed at through economic reasoning is the improvement of efficiency. A more efficient allocation is one that increases the net value of resources. Efficiency in the allocation of resources is distinguished from equity, which is concerned with justice in the distribution of wealth. Because some people value specific goods higher or lower than others, economic efficiency can often be raised through voluntary transfers of goods. The most common example of a transfer promoting efficiency is that of a freely entered into contractual relationship. Because one party to the transaction values money more than the item owned,

and the other values the item owned more than the asking price, the exchange produces a net gain in economic goods. Each person ends up better off than before. Some economists have gone so far as to argue that such a contractual exchange is morally optimal because it works within both Kantian and utilitarian theories of morality. They argue that it works with Kantian theories because a contract is thought to represent a good example of interaction between free and rational agents. It works with utilitarianism because the idea of wealth maximization intuitively translates into more utility. Economists have a variety of terms to describe possible outcomes of economic exchanges. For instance Pareto optimality is defined as a point where resources are allocated such that no one is willing to trade further. Pareto optimality is the eventual endpoint of a series of Pareto superior moves. A Pareto superior change makes at least one person better of without making anyone worse off. Because no one is worse off after the trade there are no losers in Pareto improvements, although there may be many different Pareto optimal endpoints. Furthermore, economists have developed the concept of Kaldor-Hicks efficiency to compensate for obstacles to freely contracted exchanges. Kaldor-Hicks efficiency, or potential Pareto superiority, results when the overall economic gains outweigh the losses. In other words, the gains in economic efficiency are large enough that the winners could, if they had to, compensate the losers in the new allocation of goods and still remain better off. How Law Can Encourage Economic Efficiency The law and economics movement claims that law is best understood as a tool to promote economic efficiency. But how can the institution of law help encourage efficient transactions? One way is to help avoid situations that lead to market failure. One example of market failure is the existence of monopolies: Law can be used as a tool to ensure that monopoly situations are hard to bring about and maintain. Another way legal systems can be used to ensure economically efficient transactions is through the enforcement of valid contracts. By ensuring compliance with contractual terms courts can give parties to a contract confidence that the other party will fulfill the agreed-to obligations. This becomes especially important in situations where the parties must complete their obligations at different times. But some types of market failure are less obvious, and the legal means toward remedying them subtler. One problem in market transactions is that of externalities. An externality is a cost not reflected in the market price of a good. For instance, a factory may not have to internalize the costs it imposes upon the environment into the selling price of its goods. In this case the market price of the good will not reflect its real cost â€” and therefore some of the costs are imposed upon parties in an involuntary manner. Pigou argues in regard to this that legal means should be used to impose a marginal tax upon the offending party, to internalize any externalities. The economist Coase argued that this conclusion, while warranted in specific cases, was too global. Coase argued that in a market where transactions are costless and people do not act strategically, rights assignments are irrelevant because from any starting point the results will be economically efficient. In other words, the Coase Theorem states that if there are no transaction costs the assignment of entitlements will be irrelevant to the goal of allocative efficiency. In such a situation there will be no need for law to internalize costs because people will bargain to the most efficient possible allocation of goods. But outside of conceptually ideal markets there are always transaction costs such as information costs, opportunity costs and administrative costs. If transaction costs are somewhat high, then it does matter how property rights are assigned. Therefore the enforcement and allocation of legal entitlements will be an important factor in ensuring economically efficient exchanges. So law can be used to encourage economic efficiency. But is all law best described in economic terms? It may be no real surprise that law often is used to encourage efficient exchanges. But it seems a stretch to claim that law as an institution is best completely described in economic terms. It seems counterintuitive to view all law as based upon market principles. What the economic analysis of law manages, though , is to see such disparate areas as contract, tort and criminal law as all based upon economic aims, therefore giving law a more coherent basis than other theories can offer. Richard Posner argues that tort cases - those involving private harm - can be seen as contractual by looking for the hypothetical terms that the parties to an accident would have agreed to in advance in order to bring about the accident voluntarily. Scholars have been quite effective in extending the tools of economic analysis into areas that seem to be anything but

economic in nature. Even rules of evidence and legal ethics have proved amenable to economic analysis. However, it may be argued that an economic explanation of law fails on two counts. More analytical approaches to economic explanation of law have considered this a fatal flaw in the project see Coleman This may be mistakenly importing traditional philosophical aims into a drastically different project, but the truth is that it is often hard to tell what types of theoretical claims are being made within law and economics. If the claims are of exhaustive descriptive accuracy or of the necessary and sufficient conceptual foundations of law then it is more than likely a failure. But whether or not law and economics is an accurate or even conceptually necessary description of law as a social institution, and whether or not it suffices as a complete analysis of law, it could be argued that law should in any case adopt economic efficiency as the central aim guiding judicial decision-making. Economics and Normative Jurisprudence Though analytically incomplete, economic analysis models the actual results of legal institutions better than any other theory. This does not entail, however, that law ought to be consciously used for such an aim. Advocates of law and economics have argued against such a conclusion. The arguments usually are of two types. First, it is claimed that meanings of words such as justice or duty are so vague and in dispute that the use of such concepts for a basis of judicial decisions offers no guidance whatsoever. It is argued that while such concepts are unhelpfully complex, the tools of economic analysis and the concept of economic efficiency are sufficiently clear to provide the judge a solid and predictable basis of decision. Law is better able to decide according to efficiency rather than justice or duty due to limitations of institutional competence. This might be so if issues of justice are so complex as to involve information that courts are structurally unable to process. Second, it has been argued that because the paradigm case of justice is the freely entered in to contract, law is best seen as a tool to optimize contractual arrangements. If this is so, then where law can help is in situations where transaction costs are so high as to prohibit efficient contractual relationships. Here Posner argues that law can encourage economic efficiency by assigning property rights to those parties who would have secured them through market exchange if transaction costs were lower. In other words law should bring about allocations that mimic the results of a properly functioning market. In addition, advocates of economic analysis of law make a claim that other jurisprudential traditions seem to be unable to: Later Developments Another argument for the fertility of the economic analysis of law is that it has spawned a number of further tools that seem helpful in understanding legal institutions. Three of the most important of these are the results of behavioral economics, game theory and public choice theory. Behavioral Economics and Law Practitioners of behavioral law and economics examine human limits to means-end rationality. One of the outcomes of behavioral economics is the concept of bounded rationality. Bounded rationality means that information is not processed according to a model of perfect means-end rationality but, to the contrary, is distorted due to limits of our cognitive abilities. For instance the endowment effect is thought to be a behavioral limit that distorts the proper valuation of property, an important aspect of bargaining to efficient outcomes. According to the effect, the ownership of objects creates an irrational cognitive overvaluation of them. Another claim is that our cognitive abilities are distorted by the availability heuristic. According to this the availability of strong imagery may induce us to over or underestimate the actual probability of events associated with the image.

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Chapter 4 : Law and economics - Wikipedia

*An Introduction to Game Theory and the Law Randal C. Picker ** I am pleased to have the opportunity to give the third of the three lectures in the Law School's inaugural Coase Lecture Series.*

Natural law[edit] Many early international legal theorists were concerned with axiomatic truths thought to be reposed in natural law. Eclectic or Grotian approach[edit] Hugo Grotius , a Dutch theologian , humanist and jurist played a key role in the development of modern international law. Drawing, though, from domestic contract law , he argued that relations among polities ought to be governed by the law of peoples, the jus gentium , established by the consent of the community of nations on the basis of the principle of pacta sunt servanda , that is, on the basis of the observance of commitments. On his part, Christian von Wolff , contended the international community should be a world superstate civitas maxima , having authority over the component member states. Emmerich de Vattel rejected this view and argued instead for the equality of states as articulated by 18th century natural law. In Le droit des gens, Vattel suggested that the law of nations was composed of custom and law on the one hand, and natural law on the other. During the 17th century, the basic tenets of the Grotian or eclectic school, especially the doctrines of legal equality, territorial sovereignty, and independence of states, became the fundamental principles of the European political and legal system and were enshrined in the Peace of Westphalia. Legal positivism[edit] The early positivist school emphasized the importance of custom and treaties as sources of international law. Early positivist scholar Alberico Gentili used historical examples to posit that positive law jus voluntarium was determined by general consent. Another positivist scholar, Richard Zouche , published the first manual of international law in Legal positivism became the dominant legal theory of 18th century and found its way into international legal philosophy. At the time, Cornelius van Bynkershoek asserted that the bases of international law were customs and treaties commonly consented to by various states. John Jacob Moser emphasized the importance of state practice in international law. During the 19th century, positivist legal theory became even more dominant due to nationalism and the Hegelian philosophy. International Commercial law became a branch of domestic law: Positivism narrowed the range of international practice that might qualify as law, favouring rationality over morality and ethics. The Congress of Vienna marked the formal recognition of the political and international legal system based on the conditions of Europe. International law, as it is, is an " objective " reality that must be distinguished from law "as it should be. There is only hard law, no soft law. International relations â€" international law approaches[edit] Legal scholars have drawn from the four main schools of thought in the areas of political science and international relations: Consequently, for realists, international law is a "tenuous net of breakable obligations" [6] Within the Realist approach, some scholars have proposed an "enforcement theory" according to which international legal norms are effective insofar as they "publicize clear rules, enhance monitoring of compliance, and institutionalize collective procedures for punishing violations, thereby enhancing the deterrent and coercive effects of a stable balance of power. Morrow, for instance, notes that: International politics in modern times generally recognizes no authority above the nation-state. Agreements among states are enforceable only by the agreeing states themselves. This assumption of anarchy poses a paradox for agreements to limit violence during wartime. Reciprocity serves as the main tool to enforce agreements in international politics. Enforcement of an agreement is devolved to the parties themselves. Damaged parties have the option to respond with retaliatory sanctions to a violation of an agreement. The threat of reciprocal sanctions may be sufficient to deter violations, and so agreements can be enforced in international politics. Thus, democratic states , having a representative government , are more likely than non-democratic states to accept the legal regulation of both domestic and international politics, and more likely to accept and observe international law. Furthermore, democratic societies are linked by a complex net of interstate, transnational and transgovernmental relations so that both their foreign policy bureaucracies and their civil societies are interested in promoting and strengthening transnational cooperation through the

creation and observance of international legal norms. In this regard, Slaughter notes that: Agreements concluded among liberal States are more likely to be concluded in an atmosphere of mutual trust, a precondition that will facilitate any kind of enforcement. Economics is the study of rational choice under limited conditions. Economic techniques include price theory, which evaluates strategic interaction between actors. Game Theory can demonstrate how actors with maximizing behavior might fail to take action increase join gain. These tools are used to describe and evaluate law. Using these tools, laws are tested for economic efficiency. Potential application of this approach would begin with a text-based interpretation. A secondary concern is whether or not an actual "market" context is functioning well. Thirdly, ways to improve the imperfect market are proposed. This approach could be used to analyze general legal questions, because this approach provides highly specified rules and provides the rationale for using them. This approach relies on assumptions that perfect competition exists, and that individuals will behave to maximize their preferences. The empirical presence of these conditions is often difficult to determine. International legal process[edit] The classic International Legal Process is the method of studying how international law is practically applied to, and functions within international policy, as well as the study of how international law can be improved. ILP was made a legitimate theory in the casebook International Legal Process, by Chayes, Ehrlich and Lowenfeld, in which the American legal process method was adapted to create an international legal process. Unlike the American Legal System, it considers normative values other than democracy, such as "â€¦ feminism , republicanism , law and economics, liberalism as well as human rights, peace and protection to the environment. This component of the method is important in order to resolve the changing of legal standards over time. The NLP shows its true departure from the ILP by addressing what happens in the situation of conflict, as well as what should be happening. McDougal , Harold D. Lasswell , and W. From the standpoint of the New Haven approach, jurisprudence is a theory about making social choices. International law itself reflects the expectations of relevant community members about stable patterns of behavior created by assertions of control by legal authorities. It exists to this day as a method of analyzing international law from a highly theoretical perspective. Recognizing the political aspect of international law, these scholars also argue that universality is impossible. It was successful, however, in pushing forward other approaches to international law feminist , cultural relativist , etc. Central case approach[edit] The central case approach is a method of looking at human rights situations. This approach recognizes the existence of certain universal rights. The central case approach then investigates to what extent, and in what ways the actual situation deviates from the ideal or the central case. John Finnis developed the concept of a central case as it applied to assessing legal systems; [36] Tai-Heng Cheng was the first to apply it to human rights. If used by decision-makers, the central case approach could be effective in preventing human rights abuses. The depth of a central case analysis exposes the different degrees of human rights abuses that occur, allowing policy makers to focus on the most severe cases and patterns of abuse with more urgency. The central case approach provides an accurate and flexible picture of situations that are in a state of change. Feminist theorists propose to change legal language to make it more inclusive of women, or to rethink law completely, so it is possible to promote broader social goals of justice and equality. Feminist methods seek to expose the biases from which international law is written and particularly the notion that women are more vulnerable than men and need special protection under the law. Feminist theorist Hilary Charlesworth criticizes the dialogue of women as victims in need of protection from both men and international law. Additionally, she argues that the irony of the dominant language is that while it aims to especially protect women, the emphasis is on the protection of her honor and not on the protection of her social, cultural and economic rights. While human rights conventions have recently begun to generalize in regard to equality and its recipients, in the past, any discussions of sexual orientation and gender identity have gone largely untouched. The movement of LGBT International Law Theory centers on the inclusion and awareness of LGBT rights and protection of persons , as well as the integration of queer theory within the realm of international law. For, not only does the Roman Republic and following empire itself dominate a long period of time in history, but also the very debate over

whether or not the term "international law" is an applicable term is not yet decided. The actual extent of these origins and their relevance to modern law is a topic that has not yet been approached in any depth. Rather, it is an approach to law that is unified by a particular set of concerns and analytical tools with which to explore them. It is an approach that draws primarily from the history of the encounter between international law and colonized peoples. TWAIL shares many concepts with post-colonial studies, feminist theory , Critical legal studies , Marxist theory and critical race theory. TWAIL scholarship prioritizes in its study the power dynamic between the First World and Third World and the role of international law in legitimizing the subjugation and oppression of Third World peoples. TWAIL scholars try to avoid presenting the "Third World" as a unified, coherent place but rather use the term to indicate peoples who have the shared experience of underdevelopment and marginalization. Chimni, Georges Abi-Saab , F. Anand , Mohammed Bedjaoui , and Taslim O. David Kennedy and Martti Koskenniemi have also contributed support in their own work. TWAIL as a loose network of scholars has had several conferences thus far.

Chapter 5 : John R Done Mediator & Arbitrator â€“ dispute resolution through law, economics, and game th

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