LAW AND ECONOMICS

SOME OBSERVATIONS

"Economics is a powerful, and, quite general tool of analysis that everybody who thinks and writes about law uses, consciously or not, ... it provides a convenient starting point for a general theory of law in society. It also-and this point must be stressed-has a strong empirical basis, and a basis in common sense. All about us is ample evidence that the system does use its pricing mechanism (in the broadest sense) to manipulate behavior, and pervasively." Lawrence Friedman (1984)

"For the rationale study of the law, the black letterman may be the man of the present, but the man of the future is the man of statistics and the master of economics." Justice Oliver Wendell Holmes (1897)

"Judges move slower than markets but faster than the economics' profession, a deadly combination." Judge Frank Easterbrook (1987)

"A lawyer who has not studied economics ... is very apt to be a public enemy." Justice Brandeis (1916)

"A descriptive claim of efficiency may rest upon any of a least six different definitions of efficiency and untold numbers of lists of possible rules. Arguments over the efficiency of a doctrine may shift between the various descriptive claims." Lewis Kornhauser (1980)

"Every lawyer ought to seek an understanding of economics. There we are called on the to consider and weigh the ends of legislation, the means of attaining them, and the cost. We learn that for everything we have, we must give up something else, and we are taught to set the advantage we gain against the other advantage we lose and to know what we are doing when we elect to pursue a certain course of action." Justice Oliver Wendell Holmes (1897)

COURSE DESCRIPTION

Law and Economics [alternatively named “the economics of legal relationships” or “the economic analysis of law”] consists of the application of economic theory – primarily microeconomics and the basic concepts of welfare economics – to examine the formation, structure, processes, and economic impact of law and legal institutions. The purpose of this course is to: (1) provide a brief review of microeconomic theory sufficient to (2) undertake a survey of the dominant schools of thought that comprise the field of Law and Economics. The goal is to have you understand the jurisprudential niche occupied by the several schools of thought that comprise the field of Law and Economics in present-day legal scholarship ... that is, to get a sense of the “lay of the land” ... no attempt is made to critique the schools or the ideas contained therein.

The various schools of thought that compete in this rich marketplace of ideas, include: i)
the Chicago approach to law and economics, ii) the New Haven school, iii) public choice theory, iv) social norms and Law and Economics, v) Austrian law and economics, vi) institutional law and economics, and vii) the new institutional economics. Each of these schools of thought places a significant emphasis on the interrelations between law and economy. The schools of thought presented here are both competing and complementary perspectives on, or approaches to, the study of the development and the reformulation of law. Each is devoted to its own examination of the interrelations of legal and economic processes. Each has its own stance on: i) stating what the law is, ii) discerning a basis for law’s legitimacy, and iii) advocating what the law should be. As such, the materials covered in this class are of fundamental importance not only for those working in the fields of economics and law, but also to those in the contiguous disciplines of political science, philosophy, sociology, and psychology.

BRIEF COURSE OUTLINE

Weeks 1 - 5
Introduction to Law & Economics ... and ... Review of Microeconomic Theory & Welfare Economics. (These classes will be devoted to a cursory review of microeconomics and the basic concepts of welfare economics variously employed throughout much of Law & Economics)
Chapter 1     Jurisprudential Niche of Law & Economics

Weeks 6 - 10
Chapter 2    Chicago Law and Economics & New Haven School

Weeks 11 - 14
Chapter 3    Public Choice Theory
Chapter 7    Social Norms and Behavioral Law & Economics
Chapter 6    Austrian Law and Economics
Chapter 5    The New Institutional Economics