Law's Order: What Economics Has to Do with Law and Why It Matters

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What does economics have to do with law? Suppose legislators propose that armed robbers receive life imprisonment. Editorial pages applaud them for getting tough on crime. Constitutional lawyers raise the issue of cruel and unusual punishment. Legal philosophers ponder questions of justness. An economist, on the other hand, observes that making the punishment for armed robbery the same as that for murder encourages muggers to kill their victims. This is the cut-to-the-chase quality that makes economics not only applicable to the interpretation of law, but beneficial to its crafting.

Drawing on numerous commonsense examples, in addition to his extensive knowledge of Chicago-school economics, David D. Friedman offers a spirited defense of the economic view of law. He clarifies the relationship between law and economics in clear prose that is friendly to students, lawyers, and lay readers without sacrificing the intellectual heft of the ideas presented. Friedman is the ideal spokesman for an approach to law that is controversial not because it overturns the conclusions of traditional legal scholars--it can be used to advocate a surprising variety of political positions, including both sides of such contentious issues as capital punishment--but rather because it alters the very nature of their arguments. For example, rather than viewing landlord-tenant law as a matter of favoring landlords over tenants or tenants over landlords, an economic analysis makes clear that a bad law injures both groups in the long run. And unlike traditional legal doctrines, economics offers a unified approach, one that applies the same fundamental ideas to understand and evaluate legal rules in contract, property, crime, tort, and every other category of law, whether in modern day America or other times and places--and systems of non-legal rules, such as social norms, as well.

This book will undoubtedly raise the discourse on the increasingly important topic of the economics of law, giving both supporters and critics of the economic perspective a place to organize their ideas.

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From Reader Review Law's Order: What Economics Has to Do with Law and Why It Matters for online ebook

Kamilia Aziz says

Bought this book because it is a required text for my law and economics module. His writings though, piqued my economics side; the part I never knew I had. Having someone I love majoring in economics does weigh in to this eagerness too. *winks*

Cortney R says

This is a nice read as an introduction to law and economics. It's very accessible, yet I'm not blown away so far, mainly because what I've read so far is common to just about any intermediate micro text. We'll see what happens in the chapters specifically about law...

Ushan says

An attempt to apply economic analysis to law, from an anarcho-capitalist perspective. Regardless of Friedman's politics, I liked one story from the book. When Friedman's children told him they wanted kittens, they went to the nearest animal shelter, and were subjected to a humiliating two-hour interview by a shelter volunteer; she almost extracted a promise from Friedman not to let the kittens outside, although she did not apply this rule to her own cat. Friedman and his children did not get the kittens, and he wrote a letter to the charity running the shelter, asking: why do you insist on these interviews? Surely, a good owner is better for a kitten than a bad owner, but even a bad owner is better than being put to sleep, which is what happens to kittens who do not find an owner. The charity official replied that if they gave kittens to just about anybody, they wouldn't find any volunteers.

Matt says

Builds on (morally and empirically) insane premises, but demonstrates some useful analytical tools. Friedman himself notes that it is intended as a 'how to think' rather than a 'what to think' book, and with some reservations I recommend it as such.

Law's Order is unapologetically written from the perspective of a near-strawman economist: hard-nosed, committed to logical rigour above all else, willing to shave off the awkward complications of reality in order to make it theoretically tractable, and (arguably) smuggling in some rather extreme moral foundations under the guise of sceptical neutrality. I think you have to be careful with this sort of thing, because even when you know and acknowledge that your conclusions are based on dubious premises and simplified models, it's easy to imbue them with more normative force than they deserve. I feel like Friedman falls into this trap himself: although he acknowledges that wealth maximisation != happiness maximisation, that real people are not actually perfectly rational and fully informed, that there are always relevant facts missing from any simple model, and so on, he sure does seem wedded to the pursuit of (a somewhat naive concepion of) economic efficiency, and to individual freedom (of the right-wing libertarian variety) as a kind of panacea.

My other criticism is that, although it is written in a fairly accessible style, it can be a bit of a slog -- sometimes because the pace or style of the explanation is (for me) a bit off, sometimes just because it's fairly dry stuff. It took me a long time to get through, and I often had to push myself to go back to it.

Still, Friedman is clearly a very smart guy who, despite his ideological biases, cares about the rigorous pursuit and honest communication of truth. So long as you take his caveats literally, and remember to actively apply them throughout, I think this is a really useful and interesting book.

Nate says

In this book the author applies the economic way of thinking to the law. He argues, and I think correctly, that economic analysis can be used to explain the law and suggest what the law should be. Assuming individuals are rational and that the economically efficient outcome (this can be defined a different ways, but I like to think of it as the outcome with the most benefit and the least cost) is likely the best outcome, the author uses examples to show how the economic analysis of law expands our knowledge and can help us make better decisions about what the law should be. It was a good book. However, it was slow in parts.

Ryan says

Law's Order presents an adequate introduction to a number of important issue in Law and Economics, but the schizophrenic matter by which it attempts it tries to appeal to all, but will educate few. As a book for an Economics OR a Law student, it goes through too much elementary material of both to keep interest. For the general (but educated) audience, it jumps between perhaps too many technical economic and legal terms to be readable without note-taking.

On the same note, the topics handled (such as antitrust or tort law) are given far too little time (generally 10-20 pages) to support the author's thesis. That thesis, a rejection Posner's conjecture that common law approximates economic efficiency, is not even formally presented to the reader until the last chapter. At that point, the scattershot chapters finally coalesce, although not nearly as well as Friedman would probably have liked.

To the book's general idea, aside from the seemingly ad hoc thesis in the final chapter, is the use of judging law through the standpoint of pure economic efficiency. He frequently states that, although other people may object to enforcing whatever punishment with whatever terms (such as execution, or making burglary a tort with no possible prison sentence), it is necessary to reduce them to what Neoclassical Economics says will happen. Then, if we determine if our laws match what is economically efficient, that is "interesting", and that if we should take notice whenever there is an anomaly, we should bow to either the economist's omniscience or admit our own irrationality. Either way, Friedman wins, especially dismissing a legitimate objection to his methodology with what amounts to artful dodging and pure rhetoric.

Still, I'm probably being overly critical. Excepting Friedman's desire for economic efficiency and economic efficiency (which could have been easily fixed by making the book explicitly contingent on his goal and not as asininely rejecting his academic opponents), there isn't much wrong with the economic analysis, although if you know him at all, you know David Friedman is rabidly pro-market. The law that I say also seemed sound, although as an economics student (albeit one with an interest in law), I am not qualified to approve of it. The readability problems could have been solved by splitting Law's Order into two books, one directed at economists and one directed at lawyers and law students. Or, Friedman could have made like Posner and write an 800 tome, do the whole academically thing properly, and say screw it to the popular audience.

Sinclair Chen says

Very fascinating, although probably intended for people who know more about econ and law than I. I was especially interested in the idea that theoretically insurance companies could figure out the right balance in the dilemma between consequences-based laws (having to pay damages for running people over) and action-based laws (speed limits) by insuring people against accidentally running people over, while having terms and conditions that can reduce your premium if you follow them. Then in this marketplace of traffic rules, the invisible hand will pick rules that minimize damage the most. (As you can imagine, the book also goes into the issue of how to quantify the cost of injuries, as well as many other subjects.)

H. P. says

Law’s Order was the primary text in my Economic Analysis of the Law class in law school, but I think it is sufficiently accessible for the layman, which is why I’m taking the time to review it. It’s the rare book that can be read cover-to-cover and used as a reference with equal success. His target audience in mind (math-phobic law students), Friedman (son of Milton) has stripped the main text of formulas (and, more unfortunately, charts) while leaving markers to indicate where you may find the math on his website. Friedman’s prose is informal, (relatively) jargon-free, and interspersed with regular allusions to Vikings, Redcoats, and the King’s Messengers to liven things up (Friedman is an ardent recreational medievalist and has written a fantasy novel).

Law’s Order consists of an extensive introduction to economics as it applies to the law followed by chapters devoted to specific areas of the law (e.g., intellectual property, contracts, etc.) Most of the major areas are covered, although constitutional law (admittedly an immature branch of law & economics), agency law, and business associations are omitted. Game theory is given a cursory look, and public choice (assuming you don’t categorize the entirety of law & economics as public choice) and behavioral law & economics are absent. But public choice at least certainly deserves an entire book of its own. As would be expected given Friedman’s outside interests, ample historical context is provided.

The central dilemma of a survey of law & economics is that there is just so much to cover. That is Law’s Order’s ultimate failing. Some very valuable topics aren’t covered (business associations) and others aren’t given proper attention (intellectual property, which is probably worthy of a few chapters). Charts are in my mind a must have in any economics textbook, even one aimed at text-friendly lawyers. A website can only do so much to remedy this, and Friedman’s website isn’t much to speak of.

But those are the sort of things that separate very, very good from perfect. This is still the first book I recommend to anyone looking for an introduction to law & economics (perhaps paired with a public choice primer like Government Failure by Tullock).

Matt Marro says

I own it. I think I tried to read it and gave up for more presently interesting things. Did not help on my contracts exam.

Justin says

He approaches law and economics with a pleasant mix of humility and boldness. The book clarifies a great deal about law today, and elsewhere like medieval Iceland. This is the book that decisively dissuaded me of a strong libertarian stance on property rights and convinced me to advocate for the free market and cultural norms to regulate law instead.

Caleb says

I truly enjoyed Friedman's sensibility. I found his thought processes to be entertaining and elegant, though incomplete by his own admission. This is a great introduction to the approach of law from an economic perspective.
