

Carrying the legal-economics nexus further: Samuels, Calabresi, and allocative efficiency

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Abstract: The research connects Samuels's legal-economic nexus and Calabresi's call for economic theories that fit with the 'legal world'. Both approaches defend the value of positive research and try to overcome sharp separations such as private vs public law or economic theory vs legal scholarship. The connection allows to emphasize that: 1) the legal-economic nexus also covers the concepts economists use to describe the nexus itself (or parts of it); and that 2) the way in which economic concepts are (pragmatically – hence, also implicitly) used in legal practice is important to articulate the legal-economic nexus existing in an institutional context. The concept of allocative efficiency that fits with EU antitrust and consumer law is used as a case study.

Handout

The legal-economic nexus (Samuels 1989)

“the perceived spheres of polity and economy, of law and market, are not self-subsistent, and ... it is helpful to understand what transpires by identifying the existence of a legal-economic nexus in which both seemingly distinct spheres commonly originate.”

Law and Economics (Calabresi 2016)

the relationship between law and economics is “bilateral” and the first research goal is finding an economic theory that fits with the “legal world”

The common core

- positivist
- connection between legal and economic

Differences

- Samuels: emphasis on legal (the rules?) and economic processes
- Calabresi: emphasis on lawyers' worldview (?) and economic theory

Clarification

- The nexus is both between legal and economic institutions and legal and economic analyses thereof

Samuels-Calabresi Theorem: identify the concepts that fit with both legal and economic reasoning about the legal–economic nexus

Implications

- Economists, take legal discourse seriously and make it fit

- Lawyers, take economic analysis seriously and make it fit

Why?

Example 1: valuable data

- *Sturges v. Bridgman* and the Coasian indifference

Example 2: normative grounds

- “Allocative efficiency”

If allocative efficiency is about consumer welfare, then implication:

- Shift focus from transaction costs to agency costs

Bibliography

Main texts of reference by Calabresi and Samuels:

Calabresi G, “The New Economic Analysis of Law: Scholarship, Sophistry, or Self-Indulgence?” (1982) *Proceedings of the British Academy* 85

Calabresi G, *The Future of Law and Economics: Essays in Reform and Recollection* (Yale University Press 2016, especially chapter 1)

Samuels WJ, “Legal-Economic Nexus” (1989) 57 *George Washington Law Review* 1556

Samuels WJ, “The Interrelations between Legal and Economic Processes: A Consideration of the Reactions” (2007) 18 *Constitutional Political Economy* 243

To read more by me on this

Esposito F, *The Consumer Welfare Hypothesis in Law and Economics: Towards a Synthesis for the 21st Century* (EE, [November 2022](#), especially chapters 1, 2, 4, and 7; abstracts available [here](#))

Esposito F, “On the Fitness between Law and Economics—Or Sunstein between Posner and Calabresi” (2019) 19(3) *Global Jurist*