

PRAXEOLOGY AS LAW & ECONOMICS

Josef Sima^{*}

[The law] has acted in a way contrary to its own end; it has destroyed its own object: it has been employed in abolishing the justice which it was supposed to maintain, in effacing that limit between rights which it was its mission to respect, it has put the collective force at the service of those who desire to exploit, without risk and without scruple, the person, liberty, or property of others; it has converted plunder into a right, in order to protect it, and legitimate defense into a crime, in order to punish it.

How has this perversion of the law been accomplished?
What have been the consequences of it?

– Frédéric Bastiat¹

The law & economics movement has become one of the most dynamic schools within economics. Its origin is often dated back to the University of Chicago in the 1950s and 1960s, but insights about the interconnections of economics and the law can be found in the works of earlier economists.

OLDER APPROACHES TO LAW & ECONOMICS

Despite this contemporary idea that the law & economics movements started in the 1950s, older scholarly works touched upon the problem of economics and the law, and make cases for other scholars

^{*}Deputy Department Chair, Department of Economic Policy, Prague University of Economics; and Director for Publications, Liberalni Institut, Prague, Czech Republic. sima@vse.cz.

¹Frédéric Bastiat, *The Law*, in Frédéric Bastiat, *Selected Essays on Political Economy* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 2001), p. 53.

to be the founding fathers of the discipline. For example, recent scholarship has brought attention to the period of 1830–1930. In a review of Heath Pearson's book *Origins of Law and Economics*,² Juergen Backhaus writes:

There is a consensus on the American side of the economics profession that law and economics . . . is a phenomenon which originated at the law schools of the University of Chicago and Yale University after WWII. . . . This consensus is laughable.³

Wolfgang Drechsler identifies two other antecedent traditions from the same time period. One such tradition is from the Netherlands, and the other is the German tradition of *Staatswissenschaften*.⁴

One of the movement's foremost thinkers, Richard Posner, cites Jeremy Bentham as "the first economist of non-market behavior" and, as such, an intellectual ancestor to the modern law & economics paradigm.⁵ Likewise, Armen Alchian, in discussing his famous article *The Theory of Property Rights*, acknowledges that "[o]ne can't help to see the whole issue in Adam Smith's famous section on the university."⁶

²Heath Pearson, *Origins of Law and Economics: The Economists' New Science of Law, 1830–1930* (Cambridge: Cambridge University Press, 1997).

³Juergen Backhaus, review of *Origins of Law and Economics: The Economists' New Science of Law, 1830–1930*, by Heath Pearson, *European Journal of Law and Economics* 5 (1998).

⁴See, e.g., Wolfgang Drechsler, "Etienne Laspeyres's *History of the Economic Thought of the Netherlands*: A Law & Economics Classic?" *European Journal of Law and Economics* 10, no. 3 (2000); see also entries on the history of law & economics scholarship across countries denoted as "0300 Survey of Non-English Publications," in Boudewijn Bouckaert and Gerrit De Geest, eds., *Encyclopedia of Law and Economics*, vols. 1–5 (Cheltenham, U.K.: Edward Elgar, 2000); also Wolfgang Drechsler, "On the Viability of the Concept of *Staatswissenschaften*," *European Journal of Law and Economics* 12 (2001).

⁵Quoted in Edmund W. Kitch, "The Fire of Truth: A Remembrance of Law and Economics in Chicago," *Journal of Law and Economics* 26 (1983), p. 228.

⁶Quoted in Kitch, "The Fire of Truth," p. 228.

Of course, Smith's work on both economics and the law is well known. See, e.g., Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Chicago: University of Chicago Press, 1976). He even promised, but never wrote, a treatise on "a system of those principles which ought to run through, and be the foundation of the laws of all nations." Adam Smith,

Political economists in general did not avoid discussing the relationship between economics and the law, and some schools of thought, including Institutionalists and the German Historical School, emphasized their intersections. George Stigler, a Chicago-School economist and 1982 Nobel laureate, comments on these traditions:

When Adam Smith discussed the economics of the primogeniture system, that seems to me like a traditional analysis by a competent economist. And when John S. Mill and Marshall discussed land tenancy systems . . . they were addressing some economics to what were institutional and legal questions. . . . The German historical school had big names in it. . . . All had treatises in which there were books devoted to legal institutions.

However, that is not to say that these earlier schools were engaged in the same type of analysis as were the later law & economics scholars. Stigler continues:

If you look at them—I haven't gone through all of them—it is my impression that you will be dissatisfied with them on the ground that they were largely descriptive rather than analytical. But they weren't discriminating against law and institutions.⁷

Stigler had a similar judgment on the English historical school.

There were people like Cliffe Leslie and Cunningham . . . and Bagehot, in a way became the English historical school. While they talked a lot about the importance of studying environmental conditions and the like, they paid no real attention to the institutions and the law.⁸

We might have a similar view of the analyses by the old institutionalists. All who believe in the usefulness of their exercise should read their classics such as Thorsten Veblen's *The Theory of the Leisure Class* and try to derive any theoretical lesson from it. We might then tend to agree with Mark Blaug that a "much better description of the working methodology of institutionalists is *storytelling*."⁹

The Theory of Moral Sentiments (Indianapolis, Ind.: Liberty Classics, 1982), p. 342.

⁷Quoted in Kitch, "The Fire of Truth," p. 169.

⁸Quoted in Kitch, "The Fire of Truth," p. 216.

⁹Mark Blaug, *The Methodology of Economics—or, How Economists Explain* (Cambridge: Cambridge University Press, 1980), p. 126, emphasis in original.

An interesting point about a link between anti-theoretical institutionalism and theoretical interventionist Keynesianism is made by Wallis, who claims:

All of a sudden, the very same people who opposed all abstract reasoning were seizing upon [Keynesianism] because it supported the conclusions for which they had previously thought there was no theoretical basis, and the very same individuals (I suppose Alvin Hansen is the most striking case) jumped from being institutionalists to being abstract theorists.¹⁰

Some of the least known and appreciated insights into economics and the law are those of the French tradition whose authors had a broad grasp of social processes and, thus, were able to accommodate much more than narrow economics. Almost completely forgotten is a systematic work of Abbé de Condillac, *Commerce and Government Considered in their Mutual Relationship*,¹¹ presenting a theory of state interventionism (legal regulation of the economic system) and subsequently classifying these interventions and describing their consequences. This tradition gave rise to French “harmonism” led by Bastiat and Molinari, who understood well that law affects economic performance, and also that economics is important in law, i.e., that scarcity shapes and limits the sphere of law. They pleaded for making all spheres of social life open to competition, and were well aware that the quality of law will not come out of the blue. Rather, law is costly to create and protect. So writes Bastiat about the scarcity when rights are protected, giving a lesson that is yet to be fully learned:

[E]xact justice is something so definite that legislation which had only justice in view would be virtually immutable. It could vary only as to the means of approaching ever more closely to this single end: protection of men’s persons and their rights. . . . Moreover, the forces of government would attain this goal all the better because they would all be applied to preventing and repressing misrepresentation, fraud, delinquency, crime, and acts of violence, instead of being dissipated, as at present, among a host of matters alien to their essential function.¹²

¹⁰Quoted in Kitch, “The Fire of Truth,” p. 173.

¹¹Abbé de Étienne Bonnot Condillac, *Commerce and Government Considered in their Mutual Relationship* (Cheltenham, U.K.: Edward Elgar, 1997).

¹²Bastiat, *Selected Essays on Political Economy*, p. 122.

The French economists' search for *economic harmonies* entailed an effort to find general principles of social organization that could lead toward peace and prosperity—exactly the same as the ultimate objective of law & economics. This effort also enabled the French economists to identify the problem with the monopoly of legal provision: the state. Hence, Bastiat wrote in an unsurpassable style about “legal plunder” in his *The Law*,¹³ and Molinari became the champion in his revolutionary discussion of private production of security.¹⁴

Though French harmonists made many contributions to the field of law & economics, their influence vanished paradoxically as economic education spread in law schools. As Joseph Salerno explains, instead of using “good economics” to make “good law,” the government, by decreeing an increase in the number of economics departments, managed to outnumber good economists by the bad ones, and subsequently used their “bad economics” to make “bad law.”¹⁵

It is clear that the more modern the era we study, the more candidates we have for founding fathers of law & economics. Thus, the idea that the movement originated in the 1950s “may overstate the originality of the movement.”¹⁶ However, is there any other time in the history of economic thought that could with good reason be defended as the *proper* beginning of law & economics?

MENGER AND THE RISE OF MARGINAL ANALYSIS

The introduction of marginalist ideas enabled economics to explain the principal mechanism guiding people's behavior, thereby delivering the missing piece to economics. Since law & economics strives to bring insights stemming from the mixing of approaches, it is useful to permit this mixing only after economics is ready for it.

¹³Frédéric Bastiat, *The Law* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1996).

¹⁴Gustave de Molinari, *The Production of Security* (New York: Center for Libertarian Studies, 1977).

¹⁵See Joseph Salerno, “The Neglect of Bastiat's School by English-speaking Economists: The Puzzle Resolved,” *Journal des Économistes* 11, no. 2/3 (2001). The good/bad law—good/bad economics concept comes from James M. Buchanan, “Good Economics—Bad Law,” *Virginia Law Review* 60, no. 3 (March 1974).

¹⁶Ejan Mackaay, “History of Law and Economics,” in *Encyclopedia of Law and Economics*, vol. 1, p. 66.

Only after we understand how values transform into market prices which guide people's market behavior are we able to understand how property is formed, that is, how, as Léon Walras said, "mankind determines and carries out the appropriation."¹⁷

It is notable that Carl Menger, who memorably played a part in the emergence of the new science of marginalist economics, was a lawyer who contributed to the development of law. In his *Principles of Economics*, Menger described the crucial link between economics and the law:

Thus human economy and property have a joint economic origin since both have, as the ultimate reason for their existence, the fact that goods exist whose available quantities are smaller than the requirements of men. Property, therefore, like human economy, is not an arbitrary invention but rather the only practically possible solution of the problem that is, in the nature of things, imposed upon us by the disparity between requirements for, and available quantities of, all economic goods.¹⁸

Menger, therefore, qualifies as "a leader in both the marginalist revolution and in the new science of law."¹⁹ His theory is not time- and place-contingent, and keeps a strict logical status. In short, he derives a *logic of social action*. Menger's new Austrian school, with its "general theory of human action"—*praxeology*, worked through later by Ludwig von Mises²⁰—had a broad enough grasp to include the analyses of legal processes as an integral part of its study.

Though this Mengerian-Misesian tradition was for many years part of the mainstream of economic science, it lost its impact after WWII, when economic science narrowed its focus to a more technical analysis. The Austrian school was too much of a *social* science to be part of a narrow, technical, economics.

Over time, however, the post-WWII economics mainstream—a formalized, propertyless economics—became ever more irrelevant to the real world, thereby allowing new economic schools to bring pieces

¹⁷Quoted in Pearson, *Origins of Law and Economics*, p. 32.

¹⁸Carl Menger, *Principles of Economics*, trans. James Dingwall and Bert F. Hoselitz (New York: New York University Press, 1976), p. 97.

¹⁹Pearson, "The Fire of Truth," p. 151.

²⁰See, e.g., Ludwig von Mises, *Human Action* (San Francisco: Fox & Wilkes, 1966), p. 3.

of relevant social dimensions back to economics. Some of the schools that successfully challenged the mainstream were Chicago Law & Economics, New Institutional Economics, Public Choice Theory, and Property Rights Economics. These schools—respected by the mainstream—have *some* interesting pieces to contribute toward understanding of the legal-economic nexus.

Nonetheless, Austrians, such as Menger, Mises, Hayek, Kirzner, and Rothbard, with their broad praxeological approach, understand much more. Not only did they predate the discovery of the pieces of knowledge that other schools claim to be of their origin, but, more importantly, they did it being aware of the *whole picture* of the legal-economic nexus—the need for competition in all spheres of social life, including generation and enforcement of rules, the role of profit-seeking entrepreneurs, etc. Part six of Mises’s *Human Action* (entitled “The Hampered Market Economy”) and Murray N. Rothbard’s *Power and Market*²¹ qualify as the best works in law & economics, systematically exploring the consequences of legal barriers to efficient functioning of economic system.

Despite the existence of these great systematic works, Armen Alchian and Harold Demsetz, in their celebrated 1973 article “The Property Right *Paradigm*,” claim that:

Economics textbooks invariably describe the important economic choices that all societies must make by the following three questions: What goods are to be produced? How are these goods to be produced? Who is to get what is produced? This way of stating social choice problems is misleading. . . . It is more useful and nearer to the truth to view a social system as relying on techniques, rules, or customs to resolve conflicts that arise in the use of scarce resources rather than imagining that societies specify the particular uses to which resources will be put. The arrangements for [solving conflicts] run the full gamut of human experience and include war, strikes, elections, religious authority, legal arbitration, exchange, and gambling.²²

No economist familiar with Austrian scholarship can consider such a claim legitimate, or such an article pioneering. As we have

²¹Murray N. Rothbard, *Power and Market* (Kansas City: Sheed Andrews and McMeel, 1977).

²²Armen A. Alchian and Harold Demsetz, “The Property Right *Paradigm*,” *Journal of Economic History* 33, no. 1 (March 1973), p. 16.

shown above, it was Carl Menger who, a century before, envisaged the common nexus of economics and the law. Subsequently, his followers published works developing both the economic and the legal (property) parts of the picture. In 1927, Ludwig von Mises, in *Liberalism*, defined the legal part by explaining why a property-based social system is “the only workable system of human cooperation in a society based on the division of labor.”²³ Building on this, Mises worked out the economic part in 1944 in *Human Action*.

ROTHBARD’S UNHERALDED INSIGHTS

In the 1950s and 1960s, Murray Rothbard started to integrate economics and the law in his writings culminating in *Man, Economy, and State*²⁴ and *Power and Market*. In these works, Rothbard practices the approach suggested by Demsetz and Alchian—the nature of violence and peace is identified, and human activities are analyzed using this dichotomy—and phenomena like socialism, war, slavery, strikes, customs, and problem solving are discussed.

In Rothbard’s works especially, one finds several insights that are generally attributed to other authors. For example, in Demsetz’s famous 1967 article “Toward a Theory of Property Rights,” his Indian story is used to highlight the entrepreneurial aspect of appropriative activities—that costs determine whether or when property rights will be established.²⁵ Demsetz’s argument, considered truly pioneering, was fully anticipated by Rothbard more than a decade earlier. Not only did Rothbard write about scarcity as a pre-requisite for ownership (this has been pointed out for centuries), he also explicitly spoke about profitability of appropriative activities, i.e., costs as determinants of ownership. In his 1957 criticism of the single tax, Rothbard explained that “the site owner must decide whether or not to work a plot of land or keep it idle,”²⁶ and it may happen that as a

²³Ludwig von Mises, *Liberalism* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1985), p. 19.

²⁴Murray N. Rothbard, *Man, Economy, and State* (Auburn, Ala.: Ludwig von Mises Institute, 1993).

²⁵Harold Demsetz, “Toward a Theory of Property Rights,” *American Economic Review* 57 no. 2 (May 1967).

²⁶Murray N. Rothbard, “The Single Tax: Economic and Moral Implications,” in *The Logic of Action Two* (Cheltenham, U.K.: Edward Elgar, 1997), pp. 297–98.

result of higher costs and “locational chaos,” ownership may be discontinued and some sites may be “abandoned altogether”²⁷ by their former owners. This insight definitely cannot be of Demsetz’s provenience.

Some other insights belong to Rothbard, too. For example, Yoram Barzel, a leading property-rights economist, refers to Alchian and Allen’s point that human rights are only a derivation of property rights:

The distinction made between property rights and human rights is spurious. Human rights are simply part of people’s property rights. Human rights may be difficult to protect or to exchange, but so are rights to many other assets. See Alchian and Allen (*Exchange and Production*, 2nd ed., Wadsworth], 1977, p. 114).²⁸

Rothbard previously dealt with this issue in detail in *Power and Market*,²⁹ and even made two references to his earlier articles.

In a similar case, Tom Bethell credits Armen Alchian for calling attention to the insight that we can own and sell shares in private property but not in public property.³⁰ Rothbard makes exactly the same point when talking about “The Myth of Public Ownership,”³¹ and makes a reference to F.A. Harper’s 1949 book *Liberty*.³²

We could easily list more examples of Rothbard’s property-based economics. For example, Peter Boettke mentions this story of the re-discovery of Rothbardian ideas:

Following Mises, Rothbard argued prior to the property rights school that “the important feature of ownership is not legal formality but actual rule, and under government ownership it is the government officialdom that controls and directs, and therefore ‘owns,’ the property.” Compare that with Yoram Barzel’s statement 27 years later:

²⁷Rothbard, *Power and Market*, p. 129.

²⁸Yoram Barzel, *Economic Analysis of Property Rights* (New York: Cambridge University Press, 1989), p. 2 n. 1.

²⁹Rothbard, *Power and Market*, pp. 238–40.

³⁰Tom Bethell, *The Noblest Triumph: Property and Prosperity through the Ages* (New York: St. Martin’s Press, 1998), p. 313; and Armen A. Alchian, “Some Economics of Property Rights,” *Il Politico* 30, no. 4 (1965).

³¹Rothbard, *Power and Market*, pp. 187–89.

³²F.A. Harper, *Liberty: A Path to Its Recovery* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1949), esp. pp. 106, 32.

“The claim that private property has been abolished in communist states and that all property there belongs to the state seems to me to be an attempt to divert attention from who the true owners of the property are. It seems that these owners also own the rights to terminology.”³³

When we add Rothbard’s ability to apply economic principles into areas traditionally omitted by social scientists (such as decentralized conflict solving)³⁴ and his extensive work on natural rights, ethics, and the nature of the state,³⁵ it must be clear that Rothbard developed Misesian praxeology to the point where it not only covers the whole legal-economic nexus, but also understands the logic and requirement for free competition on all margins. The broad grasp of the logic of social action that gave rise to the legal-economic nexus can be understood as an extension of Rothbard’s “welfare economics scheme” envisaged in his article “Toward A Reconstruction of Utility and Welfare Economics.”³⁶

HAYEK AND RULES

No other Austrian has surpassed Rothbard as a system builder of law & economics, though there have been other famous Austrians who dealt with particular issues of the relationship between economics and the law. Most prominent was 1974 Nobel laureate F. A. Hayek. It is generally believed that Hayek switched from economics to general social sciences in the later part of his career, but this claim is true only if we perceive economics as a very narrow discipline. When economics proper—the theory of social action as envisaged by Menger—is taken as a benchmark, Hayek can be considered to have remained an economist. As Ludwig Van Den Houwe reminds us:

³³Peter Boettke, “The New Comparative Political Economy,” *Forum Series on the Role of Institutions in Promoting Economic Growth*, Forum 6 (April 4, 2003), p. 15. n. 14, inner references omitted.

³⁴See, e.g., Rothbard, *Power and Market*, chap. 1; Murray N. Rothbard, *For a New Liberty* (San Francisco: Fox & Wilkes, 1978), chap. 12; and Murray N. Rothbard, “Law, Property Rights, and Air Pollution,” in *The Logic of Action Two*, chap. 6.

³⁵See Murray N. Rothbard, *The Ethics of Liberty* (New York: New York University Press, 1998).

³⁶Murray N. Rothbard, “Toward Reconstruction of Utility and Welfare Economics,” in *On Freedom and Free Enterprise*, ed. Mary Sennholz (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1994).

It is Hayek's emphasis on this theme of the interrelation between the system of rules and its systematic outcome at the level of the order of actions that qualifies him a Law-and-Economics theorist.³⁷

As Hayek himself sets the objective of his book *Rules and Order*:

Nowhere is the baneful effect of the division into specialisms more evident than in the two oldest of these disciplines, economics and law. Those eighteenth-century thinkers to whom we owe the basic conceptions of liberal constitutionalism, David Hume and Adam Smith, no less than Montesquieu, were still concerned with what some of them called the "science of legislation," or with principles of policy in the widest sense of this term. One of the main themes of this book will be that the rules of just conduct which the lawyer studies serve a kind of order of the character of which the lawyer is largely ignorant; and that this order is studied chiefly by the economist who in turn is similarly ignorant of the character of the rules of conduct on which the order that he studies rests.³⁸

CONTEMPORARY AUSTRIANS

Hayek's work was, however, largely limited to a particular (though very broad) theme—intertemporal dimensions of the use-of-knowledge problem, i.e., the evolution of rules and emergence of order through cultural evolution. Similarly "limited" are the research interests of other Austrian authors who have explored parts of the legal-economic nexus, such as Hans-Hermann Hoppe, Peter Boettke, Dominick Armentano, Stephan Kinsella, Walter Block, Jörg Guido Hülsmann, George Selgin, Lawrence White, Pascal Salin, Huerta de Soto, Israel Kirzner, Bruce Benson, etc.³⁹ All have contributed important pieces of knowledge, although none have reached Rothbard's qualities as a system builder.

³⁷Ludwig Van Den Houwe, "Evolution and the Production of Rules—Some Preliminary Remarks," *European Journal of Law and Economics* 5 (1998), p. 88.

³⁸F.A. Hayek, *Pravidla a rad*, vol. 1 of *Prado, zakonodarstvi a svoboda* (Praha: Academia, 1991), p. 11. This is the Czech translation of Hayek's *Rules and Order*.

³⁹See the Bibliography for selected works by these authors. For a more complete list of Austrian contributions, see Jörg Guido Hülsmann, "Economic Science and Neoclassicism," *Quarterly Journal of Austrian Economics* 2, no. 4 (Winter 1999).

Gregory Scott Crespi offers an interesting overview and source of reference to other groups of scholars who belong to the Austrian school, broadly defined.⁴⁰ He surveys major Austrian contributions and contributors to law & economics that gained appreciation in mainstream law journals. The article includes discussion of the works of Mario Rizzo, Gerald O'Driscoll, Christopher Wonnell, Roy Cordato, Michael Debow, Thomas Arthur,⁴¹ Michael Spicer, Thomas Sowell, and Linda Schwartzstein.⁴² These authors show the application of Austrian real-world law & economics based on dynamic markets, disequilibrium, and imperfect knowledge, as opposed to widespread neoclassical legal and economic modeling. As Crespi says:

[T]he Austrian approach . . . presents a coherent and comprehensive alternative framework which incorporates a number of important insights largely overlooked in most neoclassical theorizing, and which does not rely upon some of the more unrealistic neoclassical premises. . . .

[T]he Austrian approach . . . has advantages as a pedagogical framework that can effectively focus law students' attention upon certain processes and constraints highly relevant to the operation of the legal system that tend to be obscured by the neoclassical paradigm.⁴³

Thus, Austrians benefit from more than 130 years of elaboration on a broadly conceived legal-economic nexus. Their analysis remains both relevant (by focusing on real world issues) and at the same time theoretical (firmly rooted in economic and legal principles). This approach allows Austrian scholars to see the whole legal-economic nexus, and to formulate basic principles of the science of law & economics: laws of social action.

⁴⁰Gregory Scott Crespi, "Exploring the Complicationist Gambit: An Austrian Approach to the Economic Analysis of Law," *Notre Dame Law Review* 73, no. 2 (January 1998); and Gregory S. Crespi, "Teaching the New Law and Economics," *University of Toledo Law Review* 25, no. 3 (1994).

⁴¹Arthur is not explicitly Austrian, but uses a critical assessment of the United States Supreme Court opinion issued in *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451 (1992), based on works by Austrians such as Hayek and Kirzner and questioning the perfect competition framework using the concept of "rivalrous competition."

⁴²Also, see the bibliography for articles by Laurence S. Moss, Dieter Schmidten, and Eirik G. Furubotn.

⁴³Crespi, "Exploring the Complicationist Gambit," pp. 320–21.

No other school of thought can match this achievement. Some schools can provide very interesting case studies about the operation of the real world and the interplay between law & economics, but lack the underlying theory to make any general claim (such as Law and Society, or the Bloomington research program of Vincent and Elinor Ostroms). Some have a sophisticated theory, but remain largely irrelevant because they try to squeeze people into their models rather than adjust the models to work with real people (Chicagoan mainstream). And some refuse to admit the necessity of a non-monopolized legal system (Public Choice).

CONCLUSION

The Austrian approach to law & economics, therefore, must be considered a powerful alternative to the prevailing mainstream views. Its emphasis on the need to base social theories on existing people's choices (as opposed to someone's guess about possible *future* choices) is the source of different requirements for judges to base their decisions upon. As Ludwig von Mises put it:

No sensible proposition concerning human action can be asserted without reference to what the acting individuals are aiming at and what they consider as success or failure, as profit or loss.⁴⁴

Instead of looking *forward* and trying to calculate an optimal outcome, the Austrian approach urges judges to look *backward* and try to find the way to the resolution of the conflict in the contractual relations between the parties, social norms, or logic of private property. It would become crucially important, for example, who came first to the place, what is implied by the title of ownership, who promised what, etc., instead of who is the least-cost-avoider, what are market prices of goods sold, or what the judges think about the future.

Respect for people's values and choices must form the core of the science of law & economics. For decades, the Austrian approach has remained devoted to this principle. In the process, it has given us many important insights into the logic of social processes.

⁴⁴Ludwig von Mises, *The Ultimate Foundation of Economic Science* (Princeton, N.J.: Van Nostrand, 1962), p. 80.

BIBLIOGRAPHY

- Alchian, Armen A. "Some Economics of Property Rights." *Il Politico* 30, no. 4 (1965).
- Alchian, Armen A., and Harold Demsetz. "The Property Right *Paradigm*." *Journal of Economic History* 33, no. 1 (March 1973).
- Aranson, Peter H. "Bruno Leoni in Retrospect." *Harvard Journal of Law and Public Policy* 11, no. 3 (Summer 1988).
- . "The Common Law as Central Economic Planning." *Constitutional Political Economy* 3, no. 3 (1992).
- Backhaus, Juergen. Review of *Origins of Law and Economics: The Economists' New Science of Law, 1830–1930*, by Heath Pearson. *European Journal of Law and Economics* 5 (1998).
- Barzel, Yoram. *Economic Analysis of Property Rights*. New York: Cambridge University Press, 1989.
- Bastiat, Frédéric. *The Law*. Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1996.
- . *Selected Essays on Political Economy*. Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 2001.
- Bethell, Tom. *The Noblest Triumph: Property and Prosperity through the Ages*. New York: St. Martin's Press, 1998.
- Blaug, Mark. *The Methodology of Economics—or, How Economists Explain*. Cambridge: Cambridge University Press, 1980.
- Block, Walter. "O.J.'s Defense: A *Reductio Ad Absurdum* of the Economics of Coase and Posner." *European Journal of Law and Economics* 3 (1996).
- . "Private-Property Rights, Erroneous Interpretations, Morality, and Economics: Reply to Demsetz." *Quarterly Journal of Austrian Economics* 3, no. 1 (Spring 2000).
- Boettke, Peter. "The New Comparative Political Economy." *Forum Series on the Role of Institutions in Promoting Economic Growth*, Forum 6 (April 4, 2003).
- Bouckaert, Boudewijn, and Gerrit De Geest, eds. *Encyclopedia of Law and Economics*. Vols. 1–5. Cheltenham, U.K.: Edward Elgar, 2000.
- Buchanan, James M. "Good Economics—Bad Law." *Virginia Law Review* 60, no. 3 (March 1974).
- Condillac, Étienne Bonnot, Abbé de. *Commerce and Government Considered in their Mutual Relationship*. Cheltenham, U.K.: Edward Elgar, 1997.

- Crespi, Gregory Scott. "Exploring the Complicationist Gambit: An Austrian Approach to the Economic Analysis of Law." *Notre Dame Law Review* 73, no. 2 (January 1998).
- . "Teaching the New Law and Economics." *University of Toledo Law Review* 25, no. 3 (1994).
- Demsetz, Harold. "Some Aspects of Property Rights." *Journal of Law and Economics* 9 (October 1966).
- . "Toward a Theory of Property Rights." *American Economic Review* 57 no. 2 (May 1967).
- . "Toward a Theory of Property Rights II: The Competition Between Private and Collective Ownership." *Journal of Legal Studies* 31 (June 2002).
- Drechsler, Wolfgang. "Etienne Laspeyres's *History of the Economic Thought of the Netherlanders*: A Law & Economics Classic?" *European Journal of Law and Economics* 10, no. 3 (2000).
- . "On the Viability of the Concept of *Staatswissenschaften*." *European Journal of Law and Economics* 12 (2001).
- Furubotn, Eirik G. "Economic Efficiency in a World of Frictions." *European Journal of Law and Economics* 8 (1999).
- Harper, F.A. *Liberty: A Path to Its Recovery*. Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1949.
- Hayek, F.A. *Pravidla a rad*. Vol. 1 of *Pravo, zakonodarstvi a svoboda*. Praha: Academia, 1991.
- Hoppe, Hans-Hermann. *The Economics and Ethics of Private Property*. Boston: Kluwer Academic Publishers, 1993.
- . *The Theory of Socialism and Capitalism: Economics, Politics, and Ethics*. Boston: Kluwer Academic Publishers, 1989.
- Hülsmann, Jörg Guido. "Economic Science and Neoclassicism." *Quarterly Journal of Austrian Economics* 2, no. 4 (Winter 1999).
- . "Knowledge, Judgment, and the Use of Property." *Review of Austrian Economics* 10, no. 1 (1997).
- Kinsella, N. Stephan. "Against Intellectual Property." *Journal of Libertarian Studies* 15, no. 2 (Spring 2001).
- . "Legislation and the Discovery of Law in a Free Society." *Journal of Libertarian Studies* 11, no. 2 (Summer 1995).
- . "A Theory of Contracts: Binding Promises, Title Transfer, and Inalienability." *Journal of Libertarian Studies* 17, no. 2 (Spring 2003).
- Kirzner, Israel M. *Competition and Entrepreneurship*. Chicago: University of Chicago Press, 1973.

- . “Coordination as a Criterion for Economic ‘Goodness.’” *Constitutional Political Economy* 9, no. 4 (1998).
- Kitch, Edmund W. “The Fire of Truth: A Remembrance of Law and Economics in Chicago.” *Journal of Law and Economics* 26 (1983).
- Mackaay, Ejan. “History of Law and Economics.” In *Encyclopedia of Law and Economics*, edited by Boudewijn Bouckaert and Gerrit De Geest. Cheltenham, U.K.: Edward Elgar, 2000.
- Menger, Carl. *Investigations into the Method of the Social Sciences*. Translated by Francis J. Nock. New York: New York University Press, 1985.
- . *Principles of Economics*. Translated by James Dingwall and Bert F. Hoselitz. New York: New York University Press, 1976.
- Mises, Ludwig von. *Human Action*. San Francisco: Fox & Wilkes, 1966.
- . *Liberalism*. Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1985.
- . *The Ultimate Foundation of Economic Science*. Princeton, N.J.: Van Nostrand, 1962.
- Molinari, Gustave de. *The Production of Security*. New York: Center for Libertarian Studies, 1977.
- Moss, Laurence S. “Government, Civil Society, and Property: Restraining the Legal-Economic Nexus.” In *The Fundamental Interrelationships between Government and Property*, edited by Warren J. Samuels and Nicholas Mercuro. New York: JAI Press, 1999.
- Ostrom, Elinor. *Governing the Commons*. Cambridge: Cambridge University Press, 1999.
- Pearson, Heath. *Origins of Law and Economics: The Economists’ New Science of Law, 1830–1930*. Cambridge: Cambridge University Press, 1997.
- Pipes, Richard. *Property and Freedom*. New York: Alfred A. Knopf, 1999.
- Posner, Richard A. “Cost-Benefit Analysis: Definition, Justification, and Comment on Conference Papers.” *Journal of Legal Studies* 29 (June 2000).
- Reder, Melvin W. “Chicago Economics: Permanence and Change.” *Journal of Economic Literature* 20, no. 1 (March 1982).
- Rothbard, Murray N. “Comment: The Myth of Efficiency.” In *Time, Uncertainty, and Disequilibrium*, edited by Mario J. Rizzo. Lexington, Mass.: D.C. Heath, 1979.
- . *The Ethics of Liberty*. New York: New York University Press, 1998.

- . *For a New Liberty*. San Francisco: Fox & Wilkes, 1978.
- . *The Logic of Action One*. Cheltenham, U.K.: Edward Elgar, 1997.
- . *The Logic of Action Two*. Cheltenham, U.K.: Edward Elgar, 1997.
- . *Man, Economy, and State*. Auburn, Ala.: Ludwig von Mises Institute, 1993.
- . “On Freedom and the Law.” *New Individual Review* 1, no. 4 (Winter 1962).
- . *Power and Market*. Kansas City: Sheed Andrews and McMeel, 1977.
- . “Toward A Reconstruction of Utility and Welfare Economics.” In *On Freedom and Free Enterprise*, edited by Mary Sennholz. Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1994.
- Salerno, Joseph. “The Neglect of Bastiat’s School by English-speaking Economists: The Puzzle Resolved.” *Journal des Économistes* 11, no. 2/3 (2001).
- Schmidtchen, Dieter. “Time, Uncertainty, and Subjectivism: Giving More Body to Law and Economics.” *International Review of Law and Economics* 13, no. 1 (March 1993).
- Sennholz, Mary, ed. *On Freedom and Free Enterprise*. Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1994.
- Simpson, A.W. Brian. “Coase v. Pigou Reexamined.” *Journal of Legal Studies* 25, no. 1 (January 1996).
- Smith, Adam. *The Theory of Moral Sentiments*. Indianapolis, Ind.: Liberty Classics, 1982.
- . *An Inquiry Into the Nature and Causes of the Wealth of Nations*. Chicago: University of Chicago Press, 1976.
- Stigler, George J. “The Law and Economics of Public Policy.” *Journal of Legal Studies* 1 (1972).
- . *The Theory of Price*. 3rd ed. New York: Macmillan, 1966.
- Sunstein, Cass R. “Social Norms and Social Roles.” *Columbia Law Review* (1996).
- Teijl, Rob, and Rudi W. Holzhauser. “The Impact of the Austrian School on Law & Economics.” In *Essays in Law and Economics II*, edited by Boudewijn Bouckaert and Gerrit De Geest. Antwerpen: Maklu Uitgevers, 1995.
- Van Den Houwe, Ludwig. “Evolution and the Production of Rules—Some Preliminary Remarks.” *European Journal of Law and Economics* 5 (1998).