

Interconnectedness between Economic Theories and Legal Practices

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ABSTRACT

Human activities are driven by the pursuit of flourishing and the avoidance of suffering. A crucial means for achieving such pursuits is the confluence of law with economic aptitude, the speech symbolises that. It delves into how economic principles influence legal frameworks, ranging from individual actions to collective endeavours. Concepts such as utility maximization, constitutional compliance, and societal welfare are scrutinized through an economic lens, illuminating the interconnectedness between economic theories and legal practices. The speech also touches the acritical aspects upon the limitations of traditional economic measures, such as GDP, in capturing the quality of life providing multiplicity of perspective highlighting the role law plays in the economy

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Profits, benefits, costs and burdens are not mere terms of economic thoughts. They have acquired economic dimensions and connotations, when both at an individual level and at a collective or a social level, measurements and evaluations have become necessary. These terms also derive their origin from human flourishing or human suffering. Whether or not species survival is relatable to flourishing or suffering, all human activities are driven by the natural pursuit of flourishing which means state of comfort, balance and joy, as also avoidance of suffering which connotes losses, pains, burden, and discomfort.

The very impulse, noticeable in many life species including human beings to be in a community or a collective can itself be described as a natural economic activity in as much as such an activity contributes to flourishing and avoids sufferings. Enhancing or increasing the utility of any activity, we understand, relates to flourishing. So also, elimination or reduction of burdens relate to suffering. How individuals do what in a state of freedom has implications for collective of people, organisations or governments can do.

There is a deep connection between the impulse to be in a community and the need for a political constitution. The differences in utilities that may be derived by individual action and those by collective action are fundamental to any study of collective organization. It may therefore seem appealing to talk about logical economic rationalization to explain the emergence of democracy and the accompanying democratic political institutions. Economists talk about as to how individual utility may be increased by collective action in two distinct ways. By collective action, some of the external costs that may come to be imposed by the private action of other individuals may be eliminated. A simple example given in economic literature is that the city policemen keep the thief from your door. Further, some additional or external benefits that cannot be secured through purely private behavior may come through collective action. Example given is individual protection against fire versus a community fire protection system. In both the situations we may be comparing the net direct gains or the net direct costs of collective action with the cost of organization, which in other words means the cost of organizing decisions collectively. Law being an institutional and collective action will require engagement on reducing the cost of organizing decisions collectively and enhancing the outcomes of such organization. In other words the costs of enforcement (involved in managing and supervising institutions as well as other human actors in the process) and the benefit derived must be constantly reviewed. In this analysis, we may undertake to consider

and examine law as a collective action and as a means of reducing external costs that may come to be imposed on the individual when acting voluntarily and purely privately.

Just as there is an explanation both economic, social and philosophical for the emergence of democratic political institutions, we may invoke similar thoughts to deal with law as a collective action and diverse economic models and analysis to verify and validate it. We still do not have strong verification and validation frameworks, in areas of law which are built on a balance of constitutional values. The cost of constitutionally demanded action and the resultant social values may call for analysis of a different kind.

Classical and neo-classical economics have offered us many theories and approaches to understanding the fundamentals of human behavior. The rational behavior theory in the company of other perspectives on what motivations or persuasions affect or cause human behavior has its own relevance to social and economic policy making. The question as to what principles borne out of these understandings can be best utilized or invoked to bring down, keep under watch, and control, if not eliminate altogether deviant and harmful behaviour, is a question which seems to elude us. In the field of understanding and dealing with crimes from Durkheim to Sutherland to behavioural scientists, we have scripted many ideas. Notwithstanding domestic and global thinking and efforts to deal with and contain deviant behavior we find ourselves hugely dissatisfied or in disagreements. Generation of material resources for human welfare is no longer a matter of private discretion like the local market or barter. Determination of private goods in the form of profit and wealth, while not prohibited, is viewed as fit subject for watch and Social control. Yet we read thoughts of doom and cynicism, reflections on failures of democracy and the need for ushering in substantive equality as to avert debilitation of rule of law. When we talk of failures, we talk about falling from set norms and ideals. These set norms and ideals are abstract values. Working arrangements always involve costs and benefits. When collective action is required, many factors add to or subtract. The engagement of looking at laws from their enforcement effectiveness has two levels or dimensions. One is the actual intended results or outcome for instance in health coverage the actual number of households covered. The other is the transformation of social values, attitudes, for instance in women's employment environments, equal remuneration and treatment of persons in sanitation services. Both dimensions have economic implications. Both may have to be measured by new quotients of economic formulas. Thoughts and economic models in relation to measures of behaviour in bribery or corruption may be usefully borrowed in these regards.

We are no longer in a world of pure private choices. The Constitution as collective choice and constitutional practice as collective action are occupants of the field of pure private choices. This may be because all voluntary or cooperative arrangements among individuals have not ensured the elimination of burdens and cores, or dealing with suffering and equalisation of burden.

To each individual there is a comprehensive perception of the good depending upon the value system about what is good being inherited and internalized. Depending upon the social and personal opportunities available, the attainment of the good may happen. The debate regarding opportunities and outcomes is well known. The interfaces created by law for the occurrence and promotion of opportunities for self-fulfillment thus become important. The gross happiness index or the gross contentment index, however, cannot be stated with ease. But we need such indicia to evaluate the relevance of a given law and its performance quotient. In his famous Difference Principle, Rawls advocated social arrangements that gave primacy to the need of the least-advantaged members of society, with advantage being measured in terms of possession of what he called the “primary goods”. Primary goods are “things that every rational man” is “presumed to want”. Rawls did not define an individual’s advantage in terms of what he or she could actually achieve with the help of primary goods, but only in terms of the possession of such goods. In other words, he focused on the “means” rather than the “ends”. This was deliberate. Rawls was concerned with principles of fairness in a “liberal” society that respected plurality of values. In such a society, different individuals will be expected to pursue different ends in keeping with their respective value systems, or what Rawls called their “comprehensive doctrine of the good”.

It is said “the choice between voluntary action, individual or cooperative and political action, which must be collective, rests on the relative costs of social interdependence”.

This takes us to the question namely the connection between the decision as to what activities deserve to be collectivized (through law) and the appropriate decision making rules for collective choice. Collectivization through law need not necessarily mean displacement of all roles by private actions.

Economists are thus grappling with these questions in other relevant contexts, and ask questions such as how rational individual will act as to maximize here expected “utility from social interdependence”. This means that in a constitutionally determined collective (as

opposed to self sustaining and self aggregation prompted collective) the utility perception, or calculation, etc may no longer remain as free choices. But liberty and freedoms guaranteed by constitution are areas of private choices, even within legal frameworks. I understand that the movement from utility calculations in one set of collective organizations to another set of collective organizations, namely pre-constitutional while the subject of economies is also a subject of values that are ideological and philosophical. The externalities are there costs in one set will undergo changes in another set. All these are fit candidates in the law, and economics marriage.

Classical economics may have little to offer as explanations to deal with lawful behavior and unlawful deviations. Profits and payoff's and their retention and the legal principles maximizing them were the minimal areas of enquiry. further attempts towards explaining rational behavior or its absence as a means of dealing with a new law, and its demands have offered some understanding. However they seem not to take us further in pooling our insights and measures towards maximizing constitutional compliance. If constitutional compliance demands a paradigm shift in citizens' understanding of their rights and claims as mutual benefits to be equally shared and enjoyed, then surely either the same principles of behavioral changes vis a vis constitution should apply as regards compliances with ordinary laws. Can we take the help of some models and ideas in this regard.

In an Australian case, *Melway Publishing vs Robert Hicks*, the court coined a phrase "Metaphysics of Market power" to describe the clash between self interested conduct and its harms. In a way we are talking about the metaphysics of law and its combat with human conduct which seeks to pursue interests purely in individual or group fulfilment. Taking stock of multiple ways of and motivations for human conduct, that of a citizen, that of a civil servant, that of a shareholder, that of a CEO, that of a teacher, that of a medical practitioner, that of a pharma company, their common as also different reasons for behaviour, are matters for evaluation. It appears that if diverse values and purposes of laws aiming to alter or regulate human conduct for different common goods have to be successful, we may have to devise rules and principles in permutations and combinations.

What is the nature of activity of the State (Government)? Are the activities of the State comparable to the functioning of a firm or a company. At one level because the State is

mandated by the constitution to act in terms of certain directors, obligations, etc, it resembles the structure of a firm or a company which are bound by its Articles of association. But the project of association of people in a firm or a company is unlike the project of association of people under a constitution. The theory of firm by *Ronald Coase*, cannot be invoked in a strict sense to the provision of the Constitution. The collective action element, though to some extent common in both situations, is considerably different. If state activity is however considered as being aimed at removing certain externalities or sharing the burden of externalities, which may necessarily arise in the domain of pure individual or voluntary action, we may, however look at the connection between law as a collective action, the demands to be fulfilled by law through collective action and the demands under the constitution for collective action. I suppose, all of this can be considered from an extended understanding of economic analysis.

The above perspective is sought to be presented to debate on how the study of law from certain fundamental features of economic thought and their application to constitution and constitutional demands would be appropriate.

We talk about maximization of utility derived by an individual from any single human activity. We further say that such maximization occurs, when the share of the individual in the net costs of organizing the activity is minimized. We then compare the cost reduction between different modes of organizing the same activity. An individual may expect to endure a cost which is a result of action of others over which she may have no direct control. Such costs, which are external to one's own behavior are called external costs. The cost which an individual may expect to incur as a result of one's own participation in an organized activity however, will be different. Economists call this *decision making costs*. How much of this literature can be rendered relevance to multitude of law makings in diverse areas?

Despite the fact that in the realm of criminal law, procedural codes defining administration of criminal justice process, sentencing guidelines, and also other limitations, brought about by precedents and codes of conduct for Judges, judgments very often happen to be a product of intuition and value judgment, as opposed to objective rational deliberations. Even when these two elements are combined, the influence of one over the other can be very subtle. We see it in the context of imposition of the death penalty. When aggravated forms of human conduct result in abhorrent crimes, for instance violation of the dignity of women, we enter into either vigilantism or excessive penal responses. The debates about desert as a ground for punishment

imposition, ranged from the abstract to what one may call hopelessly vague. You may also notice how suggestions regarding restorative justice are opposed by inflexible oppositions. Restorative processes such as victim-offender mediation, and the sentencing circles are said to be promising procedures. A good many restorative inflictions such as averse of service to the victims may have punitive elements. Why should there be a barrier in since attempts to restore comity between victims and offender and society taking place in criminal proceedings.

As we move into a more technology driven social organization, and as we move towards human behavior, prompted and persuaded by many visible and invisible factors, the reforms in criminal law may as well look at the cost and effect relationship from new angles, and punishment from multiple perspectives. Therefore we are looking at from an economic point of view institutions in criminal justice that are likely to be resistant to change, and those that may be open to change. It may also be useful to fuse results and outcomes flowing from what is called experimental gaming studies and the costs of punishments as well as the lack of desired effects in current penology efforts. In essence the question of evaluating criminal justice administration, has to now enter a wide range of or modified variation of burdens and benefits examination. These are potential fields for economics entering into law, legal procedures, and a refinement of justice administration tools.

Without further relapsing into abstract thoughts let me ask a few questions about why we should connect law with economics or what justice utility we can derive by applying economic principles into the content and enforcement of any given law . All Statute law today are constitutional compliant. There cannot be any law which does not meet with constitutional stipulations. The idea of equal opportunities run through several social and governmental obligations. For instance women empowerment does not stop with employment or education. It must inform all laws that intersect treatment of women . Article 39A is another instance of equality in justice dispensation . Similarly child protection and welfare or juvenile justice one of the less supervised areas of social obligation . Our prison systems continue to be beset with many anachronisms and challenges. Besides laws relating to tax almost all laws deal with some or the other social, economic or political issues . They regulate a financial or economic subject . Securities exchange law is one such example. They may regulate environment related or environment impacting activities. They may provide in regard to supervising the cost of higher education. They may be in relation to food security or rural employment. All these legislations intend to bring about social or economic outcomes and which are to alter the unequal features

of the social order. The cost of the changes , the effectiveness of the changes, the ineffectiveness of the processes etc are all matters of economics. We need to enquire whether the contributions of Ronald Coase or Becker have relevance in the context of constitutionally driven ends and constitutionally structured means. This constitutionally driven ends and structured means may warrant a different level of engagement with human flourishing and human suffering.

As we are moving into a world in search of merger and integration of competing political ideologies and social solutions to claims and interests of peoples and countries, we need to ask fundamental questions about how do we evaluate the quality of life of an individual ,and of the community? The gross national product index, and related measurements are one level of measurements of quality of life. Robert F. Kennedy, an eloquent critique of what GDP does and does not measure, went on to note what it does not measure:

“The gross national product does not allow for the health of our children, the quality of their education or the joy of their play. It does not include the beauty of our poetry or the strength of our marriages, the intelligence of our public debate or the integrity of our public officials.... It measures everything, in short, except that which makes life worthwhile.”

There can be two schools of thought in relation to all the above discussions. The question asked by **Rick Fernandez**, Google’s head of learning and development, ‘*as we optimize our technology, how can we optimize our lives, so we can be our best selves*’ while a question in the context of the emerging technology age, is also a question relevant to the fundamentals of connection between law and economics. If optimization of life fulfillment can happen now by a wide range of combinations of choices, both in collective and private actions, the invisible hands of Adam Smith may have to give way. I wonder whether we can learn from past systems of sound control based on the incorrigibility of human behavior which must yield to efforts to building social arrangements through law, in which the tendency to profit or benefit by imperfections or deviations may vanish. Is this a law and economics connection?

It is in the midst of the above we need to use and invoke the tools of economic thought to refine, perfect, and humanize our laws - both contents and procedures. Legal procedures must not be wasteful . They must promote altruism. They must incentivise best practices. They must balance discretion and certainty, transparency and accountability. Institutional accountability

is not merely a matter of Right to information. The index of every measure will be the justice quotient. Consolidation of our activities, howsoever dictated or guided by economic laws or principles, must ultimately converge with distributive justice. How can the tools of economic thoughts aid us and give us hope and strength of fulfilment?