

Law and Economics in Europe

On the 20th through to the 21st of April 2012, the University of Lucerne hosted the first Law and Economics conference, focused on the foundations and applications of Law and Economics. The aim of this conference was to shed light on how Law and Economics is developing in Europe.

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Felix Bommer, the dean of the Faculty of Law, welcomed the participants and highlighted the difficulties faced by the interdisciplinary approach in Law and Economics, while pointing out its necessity and advocating for an integrative approach.

In his introductory speech, the organizer Klaus Mathis drew attention to the three challenges faced by Law and Economics scholars in Europe. Firstly the difficulties presented with an interdisciplinary scholarly approach, secondly the issues legal scholars face with regards to integrating empirical findings into legislation and the application of the law and finally the tension between civil law systems and common law systems. To date, most Law and Economics research has more or less been based on the simple reception of American literature. However, this does not take into account the particularities of a civil law system in comparison to the common law system. Mathis, urged that the time is ripe for European scholars to cultivate their own, European approach to Law and Economics and held that this conference would be a step in that direction. Each of the three panels of the conference focused on one of the challenges.

Civil Law versus Common Law

Régis Lanneau, the first speaker, presented his paper «To What Extent is the Opposition Between Civil Law and Common Law Relevant for the Use of Law and Economics?» in which he argued, that the answer does not lie in a simplified division but other criteria should be used when assessing the openness of the legal system to Law and Economics. The three criteria he presented were: the perceived instrumentality of the law, the autonomy of legal reasoning and the perceived freedom of judges.

This was followed by Mariusz Golecki's presentation on the two views of the Coase Theorem, the interpretation of which is very different in the USA in comparison to Europe. In his opinion, the popularity of Coase Theorem in Europe is due to its descriptive nature while in the USA it is viewed as too vague for predictions and therefore has lost in popularity.

The final speaker for this panel was Diego Moreno-Cruz, who presented «Three Explanatory and Predictive Realistic Strategies of Judicial Decisions Compared». These strategies are based on Brian Letter's Theory and included: economic, psychological as two rationalizations, which were complementary to each other.

Empirical Findings and the Law

The second panel dealt with empirical and social science findings and how they can be integrated into the law. On this issue, Péter Cserne addressed two questions: whether more reliance on empirical research could make regulatory policies better and if



Organizer Klaus Mathis during his introductory speech.

there are limits to importing empirical findings into law. This was followed by the question of whether or not Law and Economics should play a role in constitutional law, presented by Niels Petersen. In his opinion, constitutional law should use empirical data. This can be achieved through judicial expertise, using the legislator as an empirical fact finder and deferring to expert witnesses. Ariane Morin then showed that Swiss Contract Law contains no direct reference to efficiency, but is based on the principles of the freedom of contract and good faith. Closing the discussions of this panel, Endre Stavang presented three cases from Norway, which had applied or showed the openness of Norwegian law to economic methods in judicial decisions.

Economics in European Law

The final panel of the conference saw presentations of various interdisciplinary research questions. Firstly, Claudia Seitz discussed the «more economic approach» in European Antitrust Law. Kai Purnhagen and Jens-Uwe Franck presented the developments in EU Law and how it influences or is influenced by consumer behavior particularly drawing attention to information asymmetry and its regulation. Closing the conference, Aurélien Portuese argued that conducting efficiency analysis of the general principles of EU Law led to the crystallization of three important principles: subsidiarity, proportionality and legal certainty, which should be used as a base for the European approach to Law and Economics.

In summary, this conference laid the groundwork for a strong future for a European approach to Law and Economics. The papers presented during the conference will be published in an anthology.

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