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An Economist Reflects on Law



I graduated from law school ten years ago. During that decade I've often reflected on the differences between my experiences in law school and those as an economics graduate student.

The most obvious difference is that earning my Ph.D. was vastly more interesting and fun than earning my J.D. I am not criticizing my law professors and fellow law students; they were generally excellent. Rather, I mean only to report that my love of economics is so all-consuming that no other subject can possibly rival it. While I liked studying law—and even, on occasion, became exhilarated by it—I have always been and will remain absolutely captivated, charmed, entranced, intrigued, and thrilled by economics. So I knew I would enjoy law school less than graduate school in economics.

Several other differences come to mind. For example, a good number of my fellow law students were there simply because their parents expected them to be there. Not so in economics. Relatedly, many of my fellow law students hailed from elite backgrounds. In stark contrast, all of my comrades in economics graduate school were, like me, from either working-class or middle-class families. And, of course, most of my fellow law students aimed to earn big bucks after graduation. No one studies economics with the aim of earning a fortune.

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One of the biggest and most important differences was, as expected, in the material covered. I often criticize my fellow economists for going much too far in formalizing the discipline—for forgetting that modeling and abstract reasoning are valuable only if they enable us to better understand reality. Economics should not be about what economists do; it should be about the world.

But as dry and irrelevant as some parts of economics have become, at its core it continues to impart an utterly fundamental truth: The complex and productive economic arrangements that make possible our prosperity and, indeed, our very civilization—the enormous division of labor and the intricate exchange relationships that accompany it—are the unplanned yet happy consequences of millions upon millions of individuals each making his own consumption and production decisions within the context of private property rights and guided by market prices.

Different economists describe this truth differently. And they differ also in their understanding of the finer points of the analysis. Ludwig von Mises had a slightly different understanding of the way markets function than Milton Friedman—who, in turn, has a slightly different understanding than Gordon Tullock, who has a slightly different understanding than Vernon Smith who. . . . You get the idea. While there are differences among great economists in understanding, emphasis, and expository style, all emphasize the vital importance of decentralized decision-making guided by

market prices that emerge only in a regime of private property rights.

In brief, all good economists understand that productive economic arrangements are (to use a phrase that F.A. Hayek was properly fond of) the results of human action but not of human design. Economics graduate school is, ultimately, an attempt to impart to students a deep understanding of the logic of this decentralized, unplanned market process.

Law by Design

Law school is totally different. The reigning conception of law in today's legal academies is Law by Design. The prevailing attitude among both faculty and students is that of the central planner. The question that motivates the great bulk of legal analysis today is, "What should the law be?"

By this description, I don't mean that the typical law professor or law student asks general questions such as "should the law protect private property rights?" or "should contracts be enforced?" These legitimate questions are indeed asked. (Incidentally, one worthwhile consequence of studying law is the appreciation it imparts of the complex details that must be grappled with in answering such questions.)

Instead, I mean that today's typical law professor and student predominantly ask, "How can we use the law to engineer society so that it looks like what we professors and students feel it should look like?" To extend an analogy that I first read in a book by Richard Epstein, legal scholars today aren't content to discover and describe the rules of the road and to understand the process that generates them. Instead, too many legal scholars want to determine the specific content, direction, speed, and pattern of the traffic. Legal scholars today fancy themselves as the central planners of law and, through this process, as central planners of society itself.

Many outcomes that emerge from the peaceful, voluntary choices of individuals are condemned by legal scholars today for not measuring up to their own imaginary utopias. For example, if a greater number of women than men choose to sacrifice careers to raise children at home, an entire cadre of law professors pontificates about the resulting larger proportion of men in senior management positions. These professors propose "laws" to "solve" this "problem." Or if consumers insist on patronizing big-box retailers such as Wal-Mart, another cadre of law professors loudly laments what they (wrongly) imagine to be the crassness of commercial society and propose specific legislation to restrict consumers' choices of where to shop.

If economics graduate school were analogous to law school, economics students would spend much less time learning how markets work and far more in the futile—actually, *absurd*—quest of determining the specific price of steel or the number of bushels of pears that should be annually produced.

The notion of trying to determine such facts abstractly rather than relying on actual competitive market processes to generate and reveal them was never a major program for economists. And those relatively few economists who did conceive such calculation to be the task of the economist are today historical curiosities.

In contrast, legal scholarship remains primitive. Unlike economists, most law professors have yet to discover spontaneous order. Law for them is only what some authority declares it to be rather than the evolved product of countless human interactions. The idea that law need not be centrally planned—or, certainly, the idea that law *ought* not be centrally planned—never occurs to the typical legal scholar. For him, the law and the state are one and inseparable.

Thank goodness that economists have never seriously entertained such a crude notion about economic phenomena. □