Introduction


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This issue of the International Review of Law and Economics contains a selection of papers presented at the 15th Annual Conference of the European Association of Law and Economics (EALE). It was the first time that the annual conference of the EALE was held in the Netherlands. It took place at Utrecht, in September 1998.

Approximately 40 papers were presented at the conference. Many of these papers were submitted to this issue of the International Review of Law and Economics, and we were obliged to face the difficult task of selection. In this task we were helped by anonymous referees, who deserve much credit for their delicate task. The issue opens with the text of the invited lecture by Chief Judge Richard Posner on “Employment Discrimination: Age Discrimination and Sexual Harassment.” After this lecture, seven refereed papers are published. They cover a wide range of topics and include theoretical and empirical approaches.

The first two articles are empirical studies. In their article “The Dynamics of Pretrial Negotiation in France: Is there a Deadline Effect in the French Legal System?,” Bruno Deffains and Myriam Doriat provide empirical evidence on pretrial negotiation in France with the primary goal being to determine whether there is a deadline effect. Theoretical and experimental studies generally show that in pretrial litigation most
claims are settled just before the negotiation deadline, i.e., at the door of the court. Using data on civil law conflicts in France, the authors demonstrate that although the out-of-court settlement rate is relatively low, a deadline effect exists in the French legal system. The article complements the theoretical and experimental literature in the field of pretrial negotiation and provides additional insights into the functioning of the legal system.

The article “Modeling Crime and the Law Enforcement System” by Frank van Tulder and Abraham van der Torre presents a macroeconomic model of the Dutch criminal justice system. The empirical estimations show that demographic, social, and economic factors and the results of the law enforcement system influence the number of crimes. It is found that a rise in the clear-up rate reduces the crime rate, whereas the average term of imprisonment has a negative impact on violence. A growth in the number of young men, divorced persons, unemployed, drug addicts, and motor vehicles—each per capita—and a rise in income inequalities have a boosting effect on one or more types of crime.

The third article by Michael Faure and Paul Fenn is concerned with the costs and benefits of making liability for accidents retroactive, given the availability of liability insurance. The authors distinguish between the injurer’s perceived risk that the standard of care applied by the courts will differ from his chosen level of care, where this perceived risk is based on precedent or current practice, and the genuine uncertainty that the standard of care may change in the future as a result of unknown developments in the technology of care. While the injurer’s probability distribution over liability may be the same in each of these cases, he may be far less confident about the reliability of the probability distribution as a guide to choice in the latter case. In principle, the risk of liability arising from an unknown standard of care could be transferred to a liability insurer through the purchase of occurrence coverage. However, in addition to the usual source of difficulty for insurance markets as a result of information asymmetry, insurers also may have distaste for ambiguity. The authors show that this could in some circumstances lead to market failure in the provision of occurrence policies. These welfare losses from inefficient risk sharing as a consequence of retroactivity must, therefore, be set against the potential welfare gains from improved incentives for injurers to seek out information on care technology, as well as the concerns over distributive justice.

In their article “Unitary States and Peripheral Regions: A Model of Heterogeneous Spatial Clubs” Jean-Michel Josselin and Alain Marciano develop an analytical framework for understanding the limits of constitutional unity. Their microeconomic model of unitary states deals with two kinds of heterogeneity. First, preference distance or physical distance account for decreasing net benefits from expansion. Second, heterogeneity may involve a discontinuity in the spatial pattern of preferences: “Peripheral behaviors” threaten unity. The authors integrate such behaviors into the model and draw some lessons as to the nature of an optimal constitutional area, discussing in particular the status of peripheral regions.

The fifth article by Benito Arrunada, entitled “The Provision of Non-Audit Services by Auditors: Let the Market Evolve and Decide,” searches for and defines efficient regulation of the provision of non-audit services by auditors to their audit clients. From an examination of the particular problems posed by these services, it is concluded that they reduce total costs, increase technical competence, and stimulate more intense competition. Furthermore, they do not necessarily damage auditor independence or the quality of non-audit services. This assessment leads to recommending that legislative policy should aim at facilitating the development and use of the safeguards provided by
the free action of market forces. Particular emphasis is placed on the role played by fee income diversification and the enhancement, through disclosure rules, of market incentives to diversify. A rule of mandatory disclosure of client diversification is examined to facilitate the task of the market with regard to achieving the optimal degree of auditor independence.

In the next article, Antony Dnes applies the economic analysis of law to examine recent proposals in England and Wales for the reform of the law affecting financial settlement following divorce. Two specific measures have been proposed to reduce judicial discretion: a mathematical formula (such as a rebuttable presumption to divide equally the whole pool of assets during divorce) to be applied in the absence of agreement between the parties, or the enforcement of prenuptial agreements. The author concludes that these measures should be welfare improving but would need to be forward looking and applied to marriages, rather than divorces.

The last article by Niva Elkin-Koren and Eli Salzberger provides a look at the changing world of law with the emergence of cyberspace from the perspective of the economic approach to law. The authors argue that the Chicago paradigm cannot be of much help to analyze law in and of cyberspace. While cyberspace reduces the traditional causes of monopolies, it introduces new types of monopolies that are the consequence of control over technologies rather than of price and demand curves. Second, the strict correlation between markets and states does not exist in cyberspace. The authors equally point at the weaknesses of transaction cost analysis. The Coaseian analysis assumes a given state of technology and overlooks the correlation and reciprocity between technological developments and legal rules. The authors consider neoinstitutional law and economics as the most suitable framework for examining the changing world of cyberspace, but they suggest some refinements. Cyberspace invites a reassessment of the borders between markets and hierarchies and poses special challenges to the paradigmatic assumption of rational behavior.