

Reflecting on The Law and Economics Approach

Some good things about L&E

- Points out flaws in gov't and regulation.
- Markets: efficiency (MHVU), flexibility, change.
- Recognition of trade-offs
 - realism about social policy.
 - Avoid categorical thinking
- Points out unintended consequences of policies (rent control, farm support).

Cont'd

- Criteria for good legal rules are consequentialist
 - Wealth-max, utilitarian, welfare-enhancing
 - “the common law is best (not perfectly) explained as a system for maximizing the wealth of society”
- from Posner, *Economic Analysis of Law* (1992)
- Coase: Social problems not ‘good guys vs. bad guys’ (Neg externalities are bi-lateral)

Problems with Efficiency and Welfare criteria

- Efficiency at what?
- Is this a relative term?
 - Diff goals, each subjectively determined.
 - Pareto, Kaldor Hicks, utility.
- Utility – pleasure or happiness
 - Measurable, comparable?

Problems with Wealth criteria

- Only good for securing other things.
- Declining marginal utility of money.
- Remember zoning debate: non-monetary, non-market values: consumer surplus, neighborhood commons.

Other Questions

- Is welfare or wealth max a good principle (is a richer society a better society)?
- Gains from trade:
 - A owns satellite dish which he would sell for \$100 or more.
 - B would buy satellite dish for \$150 or less.
 - Hypothetical sale price: \$125.
- Is welfare or ‘value’ increased by the trade?
- What if A’s price was determined by hunger or economic desperation?

Strange effects of Law and Economics

- If transaction costs (of satellite trade) was more than \$50 no sale would be made.
- L&E: forced transfer is welfare enhancing.
- Amoralism: Laws against rape are justified because "even if the rapist cannot find a consensual substitute... it does not follow that he values the rape more than the victim disvalues it." (Posner "An Economic Theory of the Criminal Law")

Economics and Corporate Harms (Braithwaite)

- Reconsidering Regulation over 'performance standards.
- Specification: requiring a technology or feature.
 - Rigid, subject to regulatory capture
- Performance: requiring a net outcome from a production unit.
 - Flexible, cheapest means of achieving desired goal
 - Similar to marketable rights

Harm taxes

- Pollution charges.
- Injury taxes.
- Targets all causes of injury/pollution regardless of source or cause.
- Some injuries not attributable to 'legalism'.
 - Insufficient training, etc.
- Legalism is poorly targeted(no incentive to exceed legal/regulatory standard)

Cont'd

- Encourage:
 - prevention, not yes/no compliance.
 - Cheapest ways to minimize harm.
 - Substitutes.
- 'User pays' principle.

Shortcomings of 'performance standards' and 'harm taxes'

- Direct regulation can be immediate.
- Deferred harms (cancer from asbestos).
- Some means are not morally neutral (scientific cover-ups).
- Moral guidance & culture within org's.
- Can be hard to monitor and enforce. Displaceable harms and evasion.
- Deterrence trap: fines too high to pay for corps.

More

- Complexity of harm taxes.
- Easier on large firms than small.
 - Monopolists can absorb burden of harm taxes.
 - Costs of enforcement.
 - Small firms can't 'average' their tax burden.
- Taxes are insensitive to critical thresholds, graduated impacts, localization vs. dispersion, etc.
- Susceptible to lobbying by firms.

Advantages of regulation and non-market mechanisms

- Labour unions:
 - higher wages → forces firms to adopt high-end production.
- Environmental regulation:
 - reduces risk of innovation, basic research.
 - Encourages firms in weaker jurisdictions to follow (or lose business)

Essay

- Hand into S770 Ross on Wed. Dec. 6.
10-12, 1-3.
- Late penalty: 2% per day (no guarantee regarding submissions)

Questions

1. What are the arguments and conclusions of the economists' critique of zoning? Why does Karkkainen take issue with their critique? Who is right? Please only use assigned readings from the course.