

## Introduction

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How are we to understand the relationship between and among law and economics? Legal decisions and statutes have profound economic consequences, but in turn, these are not created in isolation; they are the product of political activity influenced by economic factors. Therefore, the approach of law and economics (L&E) provides a powerful tool for understanding these dynamics. The Welfare State remains at the centre of this legal-economic framework, serving as a key element for the redistribution of wealth and ensuring the protection of fundamental rights for all citizens. However, in the recent decades, the reach of the Welfare State has been diminished, either by political choice or economic necessity. In this sense, the effectiveness of social policies depends on how these are designed and implemented at the urban level. In this evolving regulatory landscape, we need to understand better the repercussions of economic models in social interactions with a particular emphasis on urban settlements. How do law and economics create, lead, or fight inequality in the Welfare State?

The special issue, composed of two parts – one focusing on the assumptions that matter in L&E analysis and the second on repercussions of economic policies in urban spaces – provides an advancement in the understanding the complex, yet intertwined, relationship between law and economics. The first part of this special issue, more specifically, collects the papers from the Special Workshop entitled *The Philosophical Fundamentals of Law and Economics: Exploring Different Trends and Approaches* which took place during the 31<sup>st</sup> World Congress of the International Association for Philosophy of Law and Social Philosophy IVR Congress 2024, held at the Soonsgsil University, Seoul, Republic of Korea. The relationship between and among law and economics (L&E) lies at the centre of these contributions. This workshop brought together scholars from diverse backgrounds to examine the theoretical, conceptual, and ideological underpinnings of L&E.<sup>1</sup> While some contributors defend the explanatory power of economic reasoning in law, others criticize it by highlighting its limitations and advocate for a more pluralistic and context-sensitive approach. The second part of this spe-

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<sup>1</sup> See Nicholas Mercurio & Medema Steven G, *Economics and the Law: From Posner to Postmodernism and Beyond*, Princeton: Princeton University Press, 2006; Richard A. Posner, *Economic Analysis of Law*. Boston: Little, Brown and Company, 1992; Robert Cooter & Thomas Ulen, *Law & Economics*, 6<sup>th</sup> ed., Boston: Addison-Wesley, 2012; Cento G. Veljanovski, *The Economics of Law.*, 2<sup>nd</sup> edition, London: Institute of Economic Affairs, 2006.

cial issue, in turn, collects the contributions of the Special Workshop entitled *Urban Inequalities and Legal Systems*; which also took place during the 31<sup>st</sup> IVR World Congress 2024. The contributions of this second part focus on the repercussions of economic models on social interactions with a particular emphasis in urban settlements. In these different contributions, the empirical aspects related to forms of inequality and segregation are highlighted and considered for analysis, as well as the role of law in producing these kinds of inequalities or maintaining status quo.

To begin the first part, Pierluigi Chiassoni's *The Momentous Choice* sets the stage for a fundamental debate in L&E by distinguishing between monistic and pluralistic approaches. He criticizes the dominance of the methodological imperialism of the Chicago School, and its reduction of legal reasoning to market logic, and he furthermore advocates for a pluralistic model<sup>2</sup> in its place, which would be informed by legal realism and social sciences. Chiassoni's argument challenges the apparent neutrality of economic analysis, highlighting ethical and political dimensions of legal-economic decision-making.

In response, Francesco Parisi and Brian Bix in their paper entitled *A Qualified Defense of Law and Economics* provide an examination of L&E's methodological evolution which takes on both internal and external outlooks. Bix and Parisi demonstrate how L&E has diversified beyond neoclassical efficiency models,<sup>3</sup> incorporating behavioral insights,<sup>4</sup> game theory,<sup>5</sup> and institutional analysis.<sup>6</sup> Their discussion of the Chicago, Yale, and Virginia Schools show the richness and complexity of economic approaches to law. Highlighting the wealth in scholarly approaches informing contemporary L&E, Bix and Parisi refute the notion that L&E could be conceived monolithically or as if it were committed solely to wealth maximization.

Pushing the analysis still deeper, Wojciech Zaluski, in *Vision of Human Nature in Law and Economics*, interrogates the very philosophical assumptions about human behavior that are embedded in the L&E approach. Drawing on Thomas Sowell's constrained and unconstrained visions of human rationality, Zaluski argues that L&E offers an uneasy synthesis that builds on both these perspectives, assuming human egoism while, at the same time, maintaining faith in rational social engineering. His

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2 Guido Calabresi, *The Future of Law and Economics: Essays in Reform and Recollection*, New Haven: Yale University Press, 2016.

3 Posner (note 1); Gary S. Becker, *The Economic Approach to Human Behavior*, Chicago: University of Chicago Press, 1976; Milton Friedman, *Capitalism and Freedom*, Chicago: University of Chicago Press, 1962; Louis Kaplow & Steven Shavell, *Fairness versus Welfare*, Cambridge, MA: Harvard University Press, 2006.

4 Russell B. Korobkin & Thomas S. Ulen, Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics, *California Law Review* 88 (4), 2000, 1051–1144.

5 Ken Binmore, *Natural Justice*, Oxford: Oxford University Press, 2005; Cooter & Ulen (note 1).

6 Douglass C. North, *Institutions, Institutional Change, and Economic Performance*. Cambridge: Cambridge University Press, 1990.

critical insights raise important questions about the limits of predictive modeling and the viability of economic assumptions in legal analysis.

Giovanni Tuzet contributes to the discussion by examining the role of economic reasoning in legal argumentation in *Can Economic Reasons Justify Judicial Decisions?* Tuzet categorizes economic arguments used in judicial decisions according to a typology that distinguishes whether these decisions are best conceptualized as being fact-based, interpretive, integrative, or tiebreaking. This analysis shows the very placement or lodging of the economic within the legal as Tuzet demonstrates how economic reasoning functions within legal justification. Guarding against oversimplified solutions, Tuzet challenges simplistic claims according to which efficiency would be able to serve as an independent or overriding criterion in judicial reasoning, as he highlights the necessity of aligning economic arguments with legal norms.

With an eye for the role and function of proportionality in legal decision-making, Wei Feng defends in his contribution, entitled *Proportionality and the Limited Usefulness of Economic Analysis of Law*, that L&E does not represent an adequate replacement for proportionality. He contends that proponents of L&E often overstate the connection between cost-benefit analysis and assessment of proportionality in law, and proceeds to differentiate between L&E and proportionality analysis. Finally, he focuses on the recent research proposed by Martin Borowski of “comparative balancing”, which involves considering “not the least intrusive but more efficient measure”.

Allegra Grillo and Alessio Sardo explore how macroeconomic crises influence judicial decision-making, particularly in housing law, in their contribution entitled *Economic Forces and Judicial Fates*. Their comparative study of case law from the ECtHR, ECJ, and U.S. Supreme Court demonstrates how courts mediate between property rights and economic stabilization policies. Grillo and Sardo argue that courts, far from being neutral arbiters, actively shape market structures and respond to economic shocks. The contribution is therefore able to show how what goes on in this legal field reinforces insights already defended by proponents of Legal Realism, highlighting the adaptive function of law in economic governance.

In *Regaining Balance in the Aftermath of an Economic Turmoil in the European Union*, Angelika Kaczmarek investigates the regulatory response to financial crises in the EU mortgage sector. Kaczmarek examines the shift from an information paradigm to a responsible lending framework following the Global Financial Crisis and the introduction of the Mortgage Credit Directive. Kaczmarek’s analysis underscores the growing paternalism in financial regulation and the evolving nature of the legal mechanisms aimed at mitigating systemic financial risks.<sup>7</sup>

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<sup>7</sup> Mak Vanessa & Jurgen Braspenning, *Errare Humanum Est: Financial Literacy in European Consumer Credit Law*, *Journal of Consumer Policy* 35 (2012), 1–22.

Moving beyond rigid efficiency paradigms to engage with the normative and institutional complexities of legal reasoning, this first part of the special issue, thus, reflects the dynamic evolution of law and economics. Whether through Chiassoni's call for pluralism, Parisi's and Bix's defense of methodological diversity, Zaluski's philosophical examination of human rationality, Tuzet's framework for economic argumentation in judicial reasoning, Wei Feng's criticisms of the L&E approach in making certain assumptions about proportionality, or Grillo, Sardo, and Kaczmarek's empirical insights into crisis-driven legal adaptation, these contributions collectively challenge conventional assumptions made on behalf of L&E. As legal systems confront new economic realities, an interdisciplinary and critical engagement with economic reasoning is essential for ensuring both legal coherence and social justice.

Empirical consequences of current economic policies in urban spaces are the core of the second part of the special issue. Particular emphasis is laid on the mechanisms to fight economic inequality and lack of democratic participation that plague today's urban settlements. The relationship between law and economic inequality come to the forefront of the inquiry in this part.

In *Ethnic Urban Segregation in Milan and Alice Springs – Between Facts and Norms*, Vito Breda analyses the effects of policies in the marginalization of Aboriginal and Romani communities in Australia and Italy, respectively. Breda's study inquires into how, despite Australian and Italian institutional frameworks are being designed to reduce marginalization and inequality, these frameworks still effectively exclude the most affected communities from the decision-making process offering no pathways to participation in shaping the policies that impact their lives. Breda finds that the lack of participation and racial biases exacerbates exclusion and the coherence of both legal systems is ultimately undermined by the exclusion and further marginalization of these minority groups.

In her contribution entitled *Reconceptualising Immigration – On the Symptomatic Nature of Segregation and Mobility*, Patricia Mindus discusses some ideas of Sonia Arbaci Sallazzaro, as expressed in the book entitled *Paradoxes of Segregation*.<sup>8</sup> As a way to engage forms of socio-spatial exclusion and show how these are produced by the legal frameworks that regulate migration, Mindus connects the idea of segregation as defended by Arbaci Sallazzaro with her own theory on migration as an institutional fact. According to Arbaci Sallazzaro, segregation is a consequence of inequality, not its cause. In line with this non-causal nature of segregation, Mindus argues that a similar argument can be made to hold for migration as this phenomenon appears in law. Understanding migration as an institutional fact is key to appreciating the role of law in shaping who does or does not count as a migrant.

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<sup>8</sup> Sonia Arbaci Sallazzaro, *Paradoxes of Segregation: Housing Systems, Welfare Regimes and Ethnic Residential Change in Southern European Cities*, Hoboken, N.J.: Wiley Blackwell, 2019.

In her contribution entitled *Participatory Planning as Legitimacy Enhancer: A Reality or a Utopian Pursuit?*, Agnès Díaz Castellano analyses participatory planning as a new trend of public participation in land and urban planning. This contribution aims to verify the assumption that participatory planning increases legitimacy<sup>9</sup> in urban planning through an in-depth analysis. To achieve this, the study is reinforced with an empirical analysis of urban planning cases. Also, it analyses how forms of participatory planning affect the three dimensions of political legitimacy: input, throughput and output legitimacy.

Concluding the special issue, Arnulfo Daniel Mateos Durán, in his contribution entitled *A Dogmatic Reconstruction of the Right to the City: Content and Structure*, offers a legal reconstruction of the so-called right to the city. Coined by Henri Lefebvre, in his book title *Le droit à la ville* in 1968,<sup>10</sup> this right has gained traction in the academic, social, political, and legal scene. Despite the success the notion encountered among the many social movements associated with this right, its content has remained vague.<sup>11</sup> This contribution seeks to answer some possible questions regarding the legal effects and limits of this right and to contextualize it within the current national and international framework.

The second part of this special issue portrays the problems that economic inequality brings to modern urban settlements. Concepts like segregation, discrimination, exclusion, and migration are becoming recurrent topics in the political and academic discussion. These concepts, however, require greater precision and fewer misunderstandings. The contributions by Mindus and Mateos Durán point to the need to engage in conceptual clarification as far as legal conceptualizations of migration and right to the city are concerned. Meanwhile, Breda portrays the strong disassociation between the normative goals of modern liberal democracies and the current situation of excluded minorities. The exclusion of minorities undermines the legitimacy of the State itself. The concept of legitimacy is closely linked to the work of Díaz Castellano, who analyses the importance of urban participation in enhancing legitimacy. The contributions of this second part recognize the importance and effects of the legal institutionalization mechanism which can, when properly designed also be used to combat forms of inequalities yet, not seldom, serves to maintain these.

The competing methodologies, the epistemological assumptions underlying legal-economic analysis, as well as the broader socio-economic implications of legal decision-making in an evolving regulatory landscape mark the contributions in

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<sup>9</sup> See Cristina Lafont, *Democracy Without Shortcuts*, Oxford: Oxford University Press, 2019; Samantha Besson & José Luis Martí (eds.), *Deliberative Democracy and Its Discontents*, Oxford: Oxford University Press, 2006.

<sup>10</sup> Henri Lefebvre, *Le droit à la ville*, Paris: Anthropos, 1968.

<sup>11</sup> Jordi Borja, The right to the city: From the street to Globalisation, *Monografias CIDOB* 79 (2019), 33–42; Andy Merrifield, The right to the city and beyond, *City* 15 (2011), 481.

this special issue. We hope the readings here collected will help to advance understanding of the complex and intertwined relationship that characterizes law and economics.

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