

2021

The Global Benefits of the Law & Economics Framework in Legal Education: Overview (Part 1)

Patrick H. Gaughan

Follow this and additional works at: <https://ideaexchange.uakron.edu/akronlawreview>



Part of the [International Law Commons](#)

Please take a moment to share how this work helps you [through this survey](#). Your feedback will be important as we plan further development of our repository.

Recommended Citation

Gaughan, Patrick H. (2021) "The Global Benefits of the Law & Economics Framework in Legal Education: Overview (Part 1)," *Akron Law Review*: Vol. 54: Iss. 5, Article 1.

Available at: <https://ideaexchange.uakron.edu/akronlawreview/vol54/iss5/1>

This Article is brought to you for free and open access by Akron Law Journals at IdeaExchange@Uakron, the institutional repository of The University of Akron in Akron, Ohio, USA. It has been accepted for inclusion in Akron Law Review by an authorized administrator of IdeaExchange@Uakron. For more information, please contact mjon@uakron.edu, uapress@uakron.edu.

**THE GLOBAL BENEFITS OF THE LAW & ECONOMICS
FRAMEWORK IN LEGAL EDUCATION:
OVERVIEW (PART 1)**

*Patrick H. Gaughan**

I.	Introduction	828
I.	What is the Law & Economics Framework?.....	831
II.	The Origins of the Law & Economics Framework.....	832
III.	A Primer on Law and Economics.....	834
IV.	Criticisms of the Law & Economics Perspective.....	839
V.	Conclusion.....	840

This is the first in a series of articles that overarchingly proposes that the globalization of markets necessitates the integration of the Law & Economics Framework into legal education across all legal systems. The goal of this article is to introduce readers to the Law & Economics Framework by providing an overview of relevant terms, concepts, and historical background. This article discusses the interplay of lawyers and globalization; defines the Law & Economic Framework and its origins; details relevant principles of economics; and delves into some criticisms of the Framework. The remainder of the series will be devoted to demonstrating that the intersection of international commerce and national laws necessitates the implementation of the Law & Economics Framework in legal education across legal systems.

* Patrick H. Gaughan is an Associate Professor of Law at The University of Akron. He earned his B.A. from Columbia University; M.B.A. from Trinity College, Dublin; J.D. from the University of Virginia; and his D.B.A. (International Business) from Cleveland State University. He can be reached via email at: pat@Gaughan.Global or pgaughan@uakron.edu. The author would like to thank the J. William Fulbright Foreign Scholarship Board for its scholarship grant that facilitated the present article. The author would also like to thank (in alphabetical order): Graduate Law Program Director Phalty Hap (Royal Univ. of Law and Economics); Econ. Prof. Michael Nelson (Univ. of Akron); Law Dean C.J. Peters (Univ. of Akron); and Assoc. Professor and Deputy Editor in Chief of the Hanoi Law Review Nguyen Van Quang (Hanoi Law University) for their valuable comments on earlier drafts of this article. Any and all defects are solely the author's.

I. INTRODUCTION¹

Undoubtedly, “concerns about the adverse effects of globalization aren’t new.”² Nevertheless, the speed and complexity of “globalization”—and its far-reaching positive and negative impacts—have continued to evolve.³ This raises questions regarding how legal systems and related legal education around the world can best keep up. One partial solution is for legal education in all countries to fully implement the Law & Economics Framework.⁴

For present purposes, “globalization” refers to the significant integration of markets resulting from “an open international economy with large and growing flows of trade and capital investment between countries.”⁵ However, globalization impacts far more than just trade and capital flows; it also impacts other national (domestic) interests. Globalization has “effects on societies and cultures, ecosystems and health, [and] justice and equality.”⁶ Globalization even implicates the “interplay of foreign legal norms and local legal culture.”⁷

1. This article is the first installment of a series of articles produced with the cooperation of Hanoi Law University, The University of Akron School of Law and (hopefully) additional law schools. After giving proper attribution to the original publishing journal or law review, each of the participating law schools will have the right to print all installments of this series in their primary native language and the joint right to print all installments in English. The University of Akron Law Review has kindly agreed to act as a repository for all articles within this series. The articles will be published in Volume 54, Issue 5 of the *Akron Law Review*. The repository can currently be reached at: <https://ideaexchange.uakron.edu/akronlawreview/vol54/iss5/>.

2. Paul Krugman, *What Economists (Including Me) Got Wrong About Globalization*, BLOOMBERG: OPINION (Oct. 10, 2019), <https://www.bloomberg.com/amp/opinion/articles/2019-10-10/inequality-globalization-and-the-missteps-of-1990s-economics> [<https://perma.cc/Y5N4-U4AS>].

3. See, e.g., Arvind Subramanian & Martin Kessler, *The Hyperglobalization of Trade and its Future*, in TOWARDS A BETTER GLOBAL ECONOMY: POLICY IMPLICATIONS FOR CITIZENS WORLDWIDE IN THE 21ST CENTURY 216, 216–78 (2014); see also George L. De Feis, Donald Grunewald, & George N. De Feis, *International Trade Theory of Hyper-Globalization and Hyper-Information Flow Conceived*, 5 INT’L J. BUS. & APPLIED SCI. 23, 23–28 (2016).

4. As used throughout this article, the “Law & Economics Framework” refers to the economic analysis of law as a form of legal analysis. The article refrains from using the phrase “economic analysis of law” to make it clear that the focus of this approach is primarily within the field of legal scholars relying upon economic theory.

5. Paul Hirst & Grahame Thomson, *Globalization: Ten frequently asked questions and some surprising answers*, SOUNDINGS, Autumn 1996, at 47; see also JAN AART SCHOLTE, GLOBALIZATION: A CRITICAL INTRODUCTION –(2d ed. 2005); for an overview of the various competing definitions of “globalization,” see Nayef R.F. Al-Rodhan & Gérard Stoudmann, *Program on Geopolitical Implications of Globalization Transnat’l Security, Definitions of Globalization: A Comprehensive Overview and a Proposed Definition*, GENEVA CTR. FOR SEC. POL’Y, June 19, 2006, at 1.

6. Aleya Abdel-Hadi, *Culture, Quality of Life, Globalization and Beyond*, 50 PROCEDIA – SOC. & BEHAV. SCI. 11, 11 (2012).

7. PITMAN B. POTTER, THE CHINESE LEGAL SYSTEM: GLOBALIZATION AND LOCAL LEGAL CULTURE 2 (2005).

Fortunately, national governments are not destined to be passive victims of globalization. Within the increasingly interconnected world, “[d]urable national institutions and distinctive ideological traditions still seem to shape and channel crucial corporate decisions.”⁸ Even when international activity is ostensibly between private parties, national governments still play a major role: “despite claims that globalization is leading to unified legal standards, much of law remains uniquely local, embodying local customs, legitimizing local moral judgments, and enforced, adopted and interpreted by legislators and judges who are selected directly or indirectly by the residents they will govern.”⁹

While national governments are not completely powerless, they do not completely control the globalization process either. Most international businesses have little inherently-vested interests linked to any specific country. Indeed, the corporate decision to do business in one country, rather than another, often simply involves the international effort to reduce costs—and/or to secure higher profits through special access to markets.¹⁰

Consequently, if a particular country appropriately aligns its laws and legal institutions, then the country will be more attractive to global businesses and be more likely to reap meaningful benefits. But if a country fails to intelligently manage its laws and legal institutions, the country will likely find itself at a competitive disadvantage—either in attracting global commerce or managing the results of it. Whether through the development of better institutions or the tailoring of laws and regulations, national governments have the ability to increase – or decrease—the benefits of global activities.¹¹ And, given the central role played by legal rules in the process, it is clear that lawyers can play a valuable role in shaping and managing the interaction between national interests and market behavior.

In many countries, lawyers may have been traditionally excluded from policymaking, or otherwise restricted to narrowly defined roles. Nonetheless, in today’s globalized world, it is a mistake to exclude

8. Louis W. Pauly & Simon Reich, *National structures and multinational corporate behavior: enduring differences in the age of globalization*, 51 INT’L ORG. 1, 1 (1997); see also PAUL HIRST, GRAHAME THOMPSON, & SIMON BROMLEY, *GLOBALIZATION IN QUESTION* xii–xiii (3d ed. 2009).

9. Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 CARDOZO J. INT’L & COMP. L. 143, 143 (2006).

10. See, e.g., Oliver E. Williamson, *The Vertical Integration of Production: Market Failure Considerations*, 61 AM. ECON. REV. 112, 112–13 (1971); JOE STATEN BAIN, *BARRIERS TO NEW COMPETITION* (1956); STEPHEN HERBERT HYMER, *THE INTERNATIONAL OPERATIONS OF NATIONAL FIRMS: A STUDY OF DIRECT FOREIGN INVESTMENT* (1976) (MIT Monographs in Economics).

11. Anna Maria Mayda, Kevin H. O’Rourke, & Richard Sinnott, *Risk, Government and Globalization: International Survey Evidence*, 16 (NBER, Working Paper No. 13037, 2007).

domestic lawyers from globalization management. Long ago, international corporations recognized the value of integrating global legal services with business planning.¹² This enabled international corporations to strategically evaluate all options with a complete understanding of both the legal and business consequences. In contrast, if an individual country decides to exclude their domestic lawyers from learning the Law & Economics Framework, the country is effectively creating an asymmetry that benefits international businesses.¹³

Of course, there are important differences in the expectations and roles played by lawyers in different societies. The examination of legal education in a society provides a window on its legal system. Here, one sees the expression of basic attitudes about the law: what law is, what lawyers do, and how the system operates or how it should operate.¹⁴

However, globalization increasingly creates a common need to adapt the form and substance of each particular country's legal education system. Legal education provides a critical mechanism for reinforcing the legal values and existing culture of the particular country. Even so, in narrowly fulfilling its socialization function, legal education can actually be an impediment to realizing (or otherwise coping with) the results of change—including many of the issues presented by globalization.

Fortunately, legal education within individual nations can fulfill both functions—reinforcing local legal traditions while expressly addressing the implications of globalization on the domestic practice of law. Even better, legal education can turn the problem around and educate lawyers on how the practice of law can help manage market behavior and the implications of globalization. In fact, legal education within individual countries is uniquely positioned to do both—and it starts with the Law & Economics Framework.

DISCUSSION

12. Debora L. Spar, *Lawyers Abroad: The Internationalization of Legal Practice*, 39 CAL. MGMT. REV. 8, 10–14 (1997).

13. George A. Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q. J. ECON. 488, 489–491 (1970). As a reminder, the present article does not attempt to address the broader argument as to whether or not "Law and Economics" constitutes (or should constitute) an independent legal theory. For further discussions on this issue, see GUIDO CALABRESI, *Of Law and Economics and Economic Analysis of Law*, in THE FUTURE OF LAW AND ECONOMICS: ESSAYS ON REFORM AND RECOLLECTION (2016); Oliver E. Williamson, *Transaction Cost Economics Meets Posnerian Law and Economics*, 149 J. INSTITUTIONAL & THEORETICAL ECON. 99 (1993).

14. Lawrence M. Friedman, *Lawyers in Cross-Cultural Perspective*, in LAWYERS IN SOCIETY: COMPARATIVE THEORIES I (Richard L. Abel & Philip S.C. Lewis eds., 1989).

I. WHAT IS THE LAW & ECONOMICS FRAMEWORK?

The Law & Economics Framework “studies how legal institutions, and changes in those institutions, affect economic behavior.”¹⁵ Stated slightly differently:

[The Law & Economics Framework] uses economic theory to analyze the legal world. It examines the world from the standpoint of economic theory and, as a result of that examination, confirms, casts doubt upon, and often seeks reform of legal reality. . . . In its most aggressive and reformist mode, having looked at the world from the standpoint of economic theory, if it finds that the legal world does not fit, it proclaims [the legal] world to be ‘irrational.’¹⁶

In the case of globalization, the Law & Economics Framework can be used to consider how an individual country can modify its legal institutions to maximize the benefits and/or minimize the detriment of internationally coordinated activities. Essentially, the Law & Economic Framework is an “area of economic inquiry to which a substantial knowledge of law in both its doctrinal and institutional aspects is relevant.”¹⁷ The Law & Economics Framework is a proactive approach to legal thought—supported by economic theory.

In its most narrow sense, the Law & Economics Framework includes bodies of law “regulating explicit markets—such as contract and property law, labor, antitrust and corporate law, public utility and common carrier regulation, and taxation.”¹⁸ In its broader sense, the Law & Economics Framework has been extended to non-market areas such as tort liability, “the environment, legislative and administrative processes, constitutional law, jurisprudence, . . .” etc.¹⁹ However, given the diversity of perspectives across nations, the current article does not make any recommendation as to the proper scope of “law and economics” within any particular country. But in the very least, the legal education in every country should assure that their lawyers and legal system understand—and are prepared to manage—the fundamental economic forces presented by globalization.

15. DANIEL H. COLE & PETER Z. GROSSMAN, PRINCIPLES OF LAW AND ECONOMICS 44 (David Anderson et al. eds. 2004).

16. CALABRESI, *supra* note 17, at 2.

17. Richard A. Posner, *The Law and Economics Movement*, 77 AM. ECON. REV. 1, 4 (1987).

18. *Id.* at 3.

19. Guido Calabresi, *Some Thoughts on Risk Distribution and the Law of Torts*, 70 YALE L. J. 499, 499–501 (1961); Posner, *supra* note 23, at 4.

II. THE ORIGINS OF THE LAW & ECONOMICS FRAMEWORK

In 1780, Jeremy Bentham first published his *Introduction to the Principles of Morals and Legislation*.²⁰ In that work, Bentham introduced the concept of “utility” as “the principle that approves or disapproves of every action according to the tendency it appears to have to increase or lessen—i.e. promote or oppose—happiness of the person or group whose interest is in question.”²¹ Bentham sought to apply the concept of “utility” in the context of government legislation. He recognized how utility could be related to the structure of laws and behavior of individuals.

Although the intentional integration of economic concepts into legal thought lay dormant after Bentham, the integration of economic principles continued to quietly seep into legal issues and legal education. For instance, in 1890, the U.S. government passed the Sherman Antitrust Act that prohibited monopolistic behavior by companies.²² This required lawyers and judges to understand what a “monopoly” is and what constituted monopolistic behavior.²³ Moreover, the spread of economics into legal education also occurred outside the U.S. For instance, by the 1920’s, established elite, Italian law programs included courses in economics, finance, and statistics.²⁴

Then, in 1937, Ronald Coase published *The Nature of the Firm*, in which he observed that the traditional supply and demand curve in economics was an incomplete explanation of how individuals make decisions.²⁵ As explained by Coase, although the “economic system [of supply and demand] ‘works itself[,]’ [t]his does not mean that there is no planning by individuals. These exercise foresight and choose between alternatives.”²⁶ In short, the desire to “economize” drives decisions not only in supply and demand terms, but also as to whether or not market mechanisms would be used at all. Where the cost of market mechanisms is too high, individuals will look for market alternatives. Although somewhat implicitly, Coase’s 1937 article also opened the possibility that the content of legal rules might impact individual economic behavior. In

20. JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION (1823), *reprinted in* THE COLLECTED WORKS OF JEREMY BENTHAM: AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION i (J.H. Burns & H.L.A. Hart eds., 1996).

21. *Id.* at 7.

22. The Sherman Antitrust Act of 1890, 15 U.S.C. §§ 1–7 (2018).

23. Though at this point in time, it is unlikely that lawyers were required to fully understand the economic consequences of monopolistic behavior.

24. Corrado Gini, *The Contribution of Italy to Modern Statistical Methods*, 89 J. ROYAL STAT. SOC’Y 703, 704 (1926).

25. R. H. Coase, *The Nature of the Firm*, 4 ECONOMICA (n.s.) 386, 387 (1937).

26. *Id.* at 387.

other words, there might be a manageable relationship between law and economics.

Surely, just as with Bentham, the full impact of Coase's 1937 article was not immediately apparent. Yet, economic principles continued to merge with legal issues. By the 1950's, the "importance of economics in antitrust law [was] widespread."²⁷ By the 1960's, economic principles had been applied to "antitrust law, . . . tax law, . . . corporate law, . . . patent law, . . . and public utility and common carrier regulation."²⁸ The time was finally ripe for economic theory to more expressly integrate with legal thought. This tipping point was reached in 1960 by Coase and 1961 by Guido Calabresi.

Coase's 1960 work in *The Problem of Social Cost*, highlighted the critical relationship between legal rules and economic theory.²⁹ In his 1960 article (harking back to his 1937 article), Coase observed that all legal systems have multiple potential approaches and all have transaction costs:

All solutions have costs and there is no reason to suppose that government regulation is called for simply because the problem is not well handled by the market or the firm. Satisfactory views on policy can only come from a patient study of how, in practice, the market, firms and governments handle the problem of harmful effects.³⁰

In further clarifying this, Coase added:

Of course, if market transactions were costless [as assumed in classical economics], all that matters (questions of equity apart) is that the rights of the various parties should be well-defined and the results of legal actions easy to forecast. But as we have seen, the situation is quite different when market transactions are so costly as to make it difficult to change the arrangement of rights established by the law. In such cases, the courts [and governmental regulations and institutions] directly influence economic activity. It would therefore seem desirable that the courts should understand the economic consequences of their decisions and should, insofar as this is possible without creating too much uncertainty about the legal position itself, take these consequences into account when making their decisions.³¹

27. Ward S. Bowman, Jr., *Toward Less Monopoly*, 101 U. PA. L. REV. 577, 577 (1953).

28. RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 23 (6th ed. 2003).

29. Ronald H. Coase, *The Problem of Social Cost*, 3 J. LAW & ECON. 1 (1960).

30. *Id.* at 18; see also Oliver E. Williamson, *Transaction-Cost Economics: The Governance of Contractual Relations*, 22 J. L. & ECON. 233 (1979).

31. Coase, *supra* note 37, at 19; see also Williamson, *supra* note 36.

In similar fashion, in 1961, Guido Calabresi used economic theory to provide thoughtful insight into the proper scope of “risk distribution” in tort law.³² In doing so, Calabresi extensively utilized economic theory to consider the proper scope of tort liability related to such things as enterprise liability,³³ nuisance,³⁴ extra-hazardous activities,³⁵ and independent contractors³⁶—as well as the basis for exceptions to all of these rules.³⁷

Taken together, Coase and Calabresi provided an informed perspective where lawyers could obtain a greater understanding of law and legal reasoning by resorting to relatively basic economic theory. The Law & Economic Framework had arrived.³⁸

III. A PRIMER ON LAW AND ECONOMICS

As an initial matter, it is necessary to emphasize that the Law & Economics Framework is an approach to *legal* thought that simply incorporates basic economic principles. Just as the use of basic math in legal thought does not usually require the advice of a mathematician, the incorporation of basic economic principles into legal thought usually does not require the participation of an economist (though they are always welcome to contribute). Indeed, by reserving the more advanced economic questions for economists, scholars in both disciplines (law and economics) can focus on more appropriate, higher-value, issues. So, what are some of the basic economic theories that are relied upon by Law & Economics? Consider one example.

If you look at a very simple sample plot of “Price versus Quantity” for a fictitious good or service (see next page), the Demand Curve for that good/service might look like the chart below.³⁹ This chart can be read to

32. Calabresi, *supra* note 25, at 499.

33. *Id.* at 500.

34. *Id.* at 534.

35. *Id.* at 541.

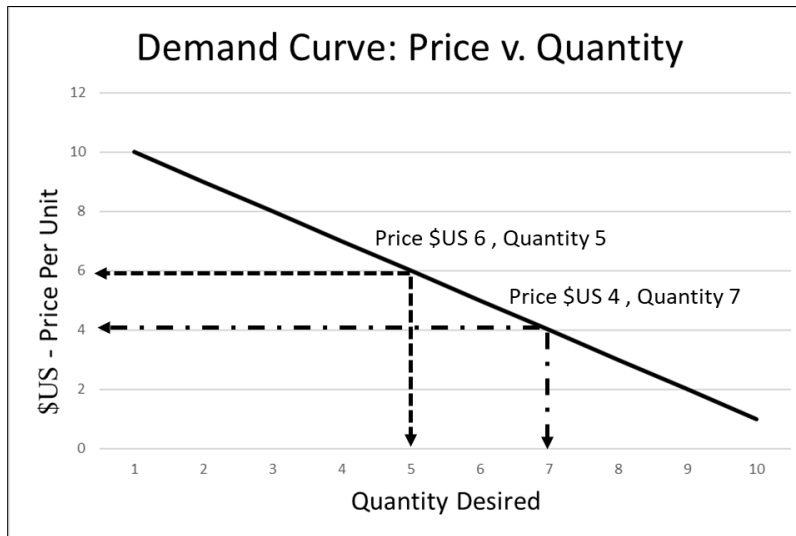
36. *Id.* at 545.

37. *Id.* at 547.

38. It should be noted that several other scholars deserve special mention as having further contributed to either Law & Economics, or economic theory closely related to law. Richard A. Posner was perhaps the greatest contributor to efforts in developing Law and Economics into a formal legal theory. In contrast, Oliver Williamson continued to expand upon the foundation of Coase in developing Transaction Cost Economics (within the field of economics).

39. Note, as shown for simplicity, the “curve” is a straight line with a negative slope of “1.” A \$US increase of 1 results in a decrease in quantity of 1. In reality, the demand curve is rarely a straight line and the slope changes at different levels of price and quantity. *See, e.g.,* Martin J. Bailey, *The Marshallian Demand Curve*, 62 J. POL. ECON. 255, 255–257 (1954); Paul R. Krugman, *Pricing to Market When the Exchange Rate Changes* (Nat’l Bureau of Econ. Research, Working Paper No. 1926,

state that at any given price (here, \$US, but it could be any other currency like €, £, ¥, ¢, ₣, ₤, ₧, or ₰), there will be a corresponding demand for a specific quantity desired by the market. So, for instance, at a price of \$US 4 (each), the hypothetical market demand will be 7 units. Though, if the unit price increases—say to \$US 6—the quantity desired by the market will drop to a total of only 5 units.⁴⁰



41

Next, let’s consider the related role of the Supply Curve (on the next page). For convenience, the original Demand Curve is still included (dotted line) plus two different supply curves have been added. A Supply Curve indicates how much—in price per unit—suppliers must receive in order to produce a given quantity of goods. In the chart below, notice that the grey Supply Curve intersects the Demand curve at the point marked “A.” At this intersection, a price of \$US 6 roughly corresponds to the production of 5 units. Additionally, note that (according to the chart) the quantity supplied drops to zero at a price of around about \$US 5 per unit. This might happen if, for instance, the cost of production for the suppliers

1986). It is respectfully submitted, that questions regarding the exact shape and slope of the demand and supply curves are best left to determination by economists.

40. Note also, that if the unit price is \$US 4 and quantity 7, then the total revenue will equal \$US 28. However, if the unit price is \$US 6, the total revenue will be \$US 30. As charted here, the choices have different financial results.

41. This chart is adapted from POSNER, *supra* note 36, at 4; see also HUBERT DOUGLAS HENDERSON, SUPPLY AND DEMAND 22 (figure 1) (1922).

is about \$US 5. Below that point, suppliers would lose money. It would not be worth it for suppliers to sell anything.

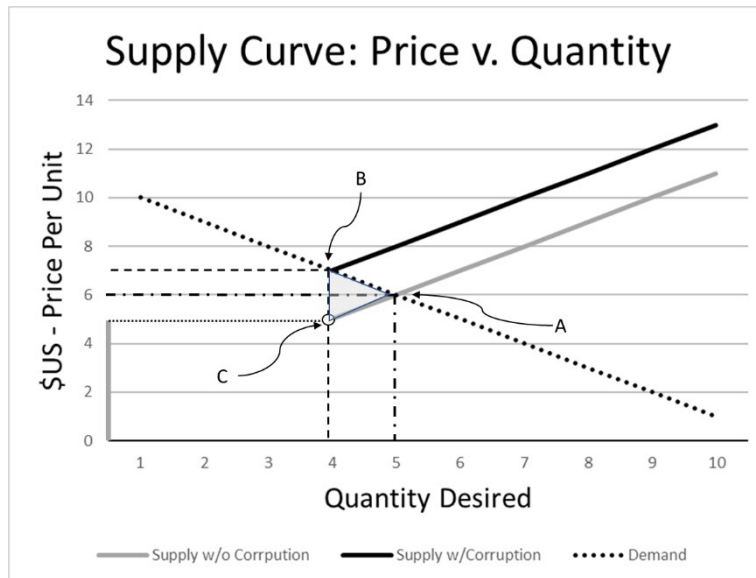
The point at which the quantity demanded and the quantity supplied equal each other (again at the point marked “A”) is called the “equilibrium price” or the “market-clearing price”—defined as that “price at which the quantity of some good demanded precisely matches the quantity supplied, leaving no unsatisfied demand and no residual supply.”⁴² Why does this matter? Because the failure to permit markets to achieve an efficient equilibrium will ultimately cause individuals – either buyers, sellers, or both - to alter the allocation of their resources.⁴³

For instance, consider what happens if—for example—the country where the market is located has a corruption problem. Assume further that the cost of that corruption is \$US 2 per unit. Although the Demand Curve will remain the same, the suppliers to that market will have to add the \$US 2 per unit cost of corruption. The Supply Curve will now move up \$US 2 and look like the black supply curve that intersects the Demand Curve at the point marked “B.” At this intersection, consumers pay roughly \$US 7 per unit and therefore the demand drops to a quantity of 4 units. In effect, consumers pay more and suppliers produce less. Both the suppliers and consumers lose.⁴⁴

42. DANIEL H. COLE & PETER Z. GROSSMAN, PRINCIPLES OF LAW AND ECONOMICS 8 (2005).

43. An important characteristic of market equilibrium is that, at that particular point, both sellers and buyers value the good or service equally. Neither sellers or buyers possess any unmet, excess, value—and therefore neither has any incentive to deploy their excess “utility” in other market alternatives. When supply is above demand, buyers value the goods less than the sellers (and sellers have an incentive to seek other alternatives). When supply is below demand, buyers value the goods more than the sellers (and buyers have an incentive to seek other alternatives. *See, e.g.*, JEFFREY L. HARRISON & JULES THEEUWES, LAW & ECONOMICS 23 (2008).

44. The amount of total value lost by the market (both buyers and sellers) due to the corruption would equal the area of the triangle ABC and is referred to as the “deadweight loss.” *Id.* at 25.



45

Notice further that at a consumer price of roughly \$US 7, supplier revenue would actually equal only \$US 5 after paying the \$US 2 corruption expense. This would correspond to the exact point on the original grey supply curve where suppliers would decide to abandon the market altogether (marked as "C"). As drawn, corruption could essentially create a situation where supply shortages would become a serious risk.⁴⁶

How would suppliers respond? We would expect that some firms would respond to the diseconomies and pursue other alternatives. For instance, some suppliers might try to avoid corruption expenses by refusing to sell any individual units. Rather than selling units separately, firms might only sell integrated products that use individual units. Alternatively, some other firms might be tempted to illegally sell units on an unofficial "black" market in a different effort to avoid the corruption charges. And yet other firms might decide to abandon the local market altogether and only sell their units in some other country. Of course, up to this point, the discussion has been exclusively economic. However, the Law & Economics Framework would further apply a unique perspective

45. This chart is adapted from Mark D. Hayford, *Using Supply, Demand, and the Cournot Model to Understand Corruption*, 38 J. ECON. EDUC. 331, 333 (figure 1) (2007).

46. Realize that similar shortages could be caused by other sources as well. For instance, high transaction costs or ill-informed price controls could have similar consequence.

in analyzing the proper role of laws and institutions in helping to obtain a more desirable outcome.

Undoubtedly, all countries have some type of moral consensus that generally says “corruption is bad.” But how many countries have local lawyers that economically understand *why* corruption is bad or *how* it hurts the country? How many countries have lawyers that are equipped to economically evaluate different laws on corruption, the implications of black markets, the existence and form of corporate firms, and the overall loss of global business? Given the critical role played by specific laws in shaping the resulting behavior, is it really wise to leave the legal answers to these questions only to economists?

The fundamental assumption of the Law & Economics Framework (as in Economics alone) is that human beings are “rational utility maximizer[s].”⁴⁷ For this reason, Law & Economics posits that all legal rules are not created equally. Some legal rules can be adapted to achieve better, more efficient, intended results—or otherwise avoid unintended results.⁴⁸ For instance, in the example above, any legislation that would further increase the transaction costs (without reducing any other costs) for suppliers would essentially kill the local market. This could occur, for instance, if local legislation proposed a \$US 1 sales tax based on some vague promise of policing of anti-corruption laws. If suppliers did not believe that the tax would actually reduce the cost of corruption, the legislation would likely deprive consumers of any goods on the free market. Similarly, if there were separate legislation that sought to help consumers by setting a maximum sales price of \$US 6 per unit (without removing corruption), it would also essentially cause suppliers to pursue alternatives to legitimate market transactions.

Stated otherwise, the Law & Economics Framework has potential application to areas well-beyond addressing corruption. Rather than passively accepting that business firms exist to economize around less efficient market mechanisms,⁴⁹ the law and economics perspective enables lawyers and judges to ask which aspects of the existing legal system are making the market mechanisms do bad things. Indeed, if the local interests would prefer more firms to exist, the Law & Economics Framework enables lawyers to ask how firms and markets can be made even more economical.

47. POSNER, *supra* note 36, at 4.

48. Coase, *supra* note 33.

49. *Id.* at 390.

IV. CRITICISMS OF THE LAW & ECONOMICS PERSPECTIVE

Unquestionably, a perspective informed by a linkage of law and economics is not without its critics. Critics have claimed that law and economics “lacks richness.”⁵⁰ Critics have pointed out that individuals are not purely “rational maximizers of their self-interest.”⁵¹ Other critics point out that, as a legal theory, law and economics is non-falsifiable.⁵² Other critics assert that law and economics “inculcates amoral habits of thought.”⁵³

In response, others have proposed a behavioral approach to law and economics that addresses specific weaknesses like “bounded rationality, bounded willpower, and bounded self-interest.”⁵⁴ At the same time, other critics have argued over whether law and economics is a positive legal theory, normative legal theory, or something else.⁵⁵ Yet other critics assert that the power of law and economics is overstated—that reality is a blend of efficiency, plus accidental conditions akin to chaos theory, historical remnants creating a path dependency, and evolutionary accidents.⁵⁶

All these criticisms certainly possess some merit. But most of these criticisms fall well beyond the recommended purposes of the current paper. The present paper identifies the inherent benefit of legal education that provides a meaningful basis for understanding globalization. It is completely unnecessary to determine whether Law & Economics constitutes an independent legal theory. It is enough that economic theory informs legal understanding and judgment. The insights to be gained for lawyers in all nations clearly outweighs any detriment of some other situations. To reject the law and economics perspective in addressing issues related to globalization is to abandon an understanding of the forces

50. Robert C. Ellickson, *Bringing Culture and Human Frailty to Rational Actors: A Critique of Classical Law and Economics*, 65 CHI.-KENT L. REV. 23, 23 (1989).

51. Richard A. Posner, *Some Uses and Abuses of Economics and Law*, 46 U. CHI. L. REV. 281, 302 (1979).

52. Arthur A. Leff, *Economic Analysis of Law: Some Realism About Nominalism*, 60 VA. L. REV. 451, 457 (1974).

53. Edmund W. Kitch, *The Intellectual Foundations of “Law and Economics,”* 33 J. LEGAL EDUC. 184, 188 (1983).

54. Christine Jolls, Cass R. Sunstein & Richard Thaler, *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471, 1476 (1998); see also Russell B. Korobkin & Thomas S. Ulen, *Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics*, 88 CALIF. L. REV. 1051, 1075–101 (2000).

55. Francesco Parisi, *Positive, Normative and Functional Schools in Law and Economics*, 18 EUR. J. L. & ECON. 259 *passim* (2004).

56. Mark J. Roe, *Chaos and Evolution in Law and Economics*, 109 HARV. L. REV. 641 *passim* (1996).

creating both the challenges and the opportunities. It is also to minimize the speed and ability of the local legal systems to adapt.

V. CONCLUSION

The best way for globally-engaged countries to maximize the benefits of globalization is to begin integrating the Law & Economics Framework into their respective legal traditions. The best way to achieve this is through legal education. In the process, legal education will be facilitating a more informed national response to globalization. At the same time, each country's local bar will become a greater resource in helping their clients and country to succeed.