



1ST POLISH
LAW & ECONOMICS
CONFERENCE





UNIVERSITY OF WARSAW

MAY 6, 2010 SENATE HALL

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CONFERENCE WEBSITE

WWW.LAWANDECONOMICS.PL



WELCOME

It is our pleasure to welcome you to the 1st Polish Law & Economics Conference.

Held under patronage of the Deans of Faculty of Economic Sciences and Faculty of Law and Administration of the University of Warsaw, 1st Polish Law & Economics Conference is the first major academic event in the field of Law & Economics in Poland. The main aims of the conference are to present the up-to-date academic achievements of Polish Law & Economics and provide an impulse for further development in this respect. Additionally, 1st Polish Law & Economics Conference provides a platform for cooperation between Law & Economics researchers in Poland and Central Europe, as well as a unique opportunity to present Polish Law & Economics to an international audience.

Law & Economics (Economic Analysis of Law) is a relatively young interdisciplinary research program applying economic concepts to explain and clarify legal issues, not only with respect to antitrust and economic law, but also to a wide range of non-market activities, from liability rules to family matters and crime. Law & Economics has influenced legislation and case law, particularly in the United States and European Union, and has become an integral part of legal and economic education at the most prestigious universities in the world.

In Poland, where the quality of legislation is often regarded as a serious obstacle to the functioning of the society and development of the economy, the Law & Economics movement has a particularly important role to play. Studies in this field have been developing in Poland for the last few years, with the University of Warsaw being a forerunner and one of the leading institutions in this respect. Since 2005 the development of Economic Analysis of Law in Poland has been supported by the Polish Association of Law & Economics (Polskie Stowarzyszenie Ekonomicznej Analizy Prawa – PSEAP).

Thank you for joining us in Warsaw!

On behalf of the Organizing Committee

Dr. Katarzyna Metelska-Szaniawska





CONFERENCE PROGRAM

- 9:15-10:00 Registration
- 10:00-10:15 Conference opening
- 10:15-11:45 **KEYNOTE LECTURE: PROF. DR. STEFAN VOIGT**
New Trends in Law & Economics: Economic Effects of Constitutional Law
- 11:45-11:55 Coffee break
- 11:55-13:10 **SESSION 1: GENERAL TOPICS**
Chairman: Rafał Stroiński (University of Warsaw & PSEAP)
Paweł Chmielnicki (Jan Kochanowski Humanistic and Natural Science University): *Reasons for Relationships Between Long-Term Trends in the Economy and Quantitative Changes in the Law-Making Process*
Andrzej Baniak (Central European University), **Peter Grajzl** (Washington and Lee University): *Interjurisdictional Linkages and the Scope for Institutional Harmonization*
Waldemar Florczak (University of Łódź): *An Empirical Macroeconomic Model of Crime for Poland*
- 13:10-13:20 Coffee break
- SESSION 2: EUROPEAN LAW**
Chairman: Jarosław Beldowski (Warsaw School of Economics & PSEAP)
Łukasz Gorywoda (European University Institute): *Institutional Approach to Optional Elements in European Directives*
Agnieszka Jańczuk (European University Institute): *Private Regulation in the EC: The Example of Single Euro Payments Area*
Agata A. Kocia (University of Warsaw): *Tax System as a Factor Attracting Investment into the European Union Member Countries*
- 14:35-15:15 Lunch
- 15:15-16:45 **SESSION 3: PUBLIC LAW AND REGULATION**
Chairman: Katarzyna Metelska-Szaniawska (University of Warsaw & PSEAP)
Oles Andriychuk (University of East Anglia): *Do Markets Ever Fail? Reconciling the Consequentialist and the Deontological Approaches to the Market Process*
Janusz Paczocha (National Bank of Poland), **Wojciech Rogowski** (National Bank of Poland, Warsaw School of Economics): *Regulatory Restrictions of Doing Business in Poland. Quantitative Analysis of Regulation in Period 1989-2009*
Wojciech Deja (District Chamber of Attorneys at Law in Warsaw & University of Warsaw): *Public-Private Partnership Misuse: Case Study*
Otylia Trzaskalska-Stroińska (Department of Economic Regulations, Ministry of Economy): *Regulatory Reform - State of Play*
- 16:45-17:00 Coffee break
- 17:00-18:30 **STUDENT PANEL (IN POLISH)**
Chairman: Tomasz Mielniczuk
Presentations delivered by winners of the Best Student Paper Prize: Piotr Ziółkowski (IV prize), Anna Laszczyk (III prize), Piotr Semeniuk (II prize), Michał Gintowt (II prize)
- 18:30 Conference closing



SCIENTIFIC COMMITTEE



Prof. Wiesław Czyżowicz
Warsaw School of
Economics & PSEAP



Prof. Tomasz Giaro
Faculty of Law and
Administration, University of
Warsaw



Prof. Jerzy Wilkin
Faculty of Economic
Sciences, University of
Warsaw



Dr. Stanisław Cichocki
Faculty of Economic
Sciences, University of
Warsaw & PSEAP



Dr. Jacek Czabański
The Institute of Justice &
PSEAP



**Dr. Katarzyna Metelska-
Szaniawska**
Faculty of Economic
Sciences, University of
Warsaw & PSEAP



**Dr. Przemysław
Mikłaszewicz**
PSEAP



Jarosław Bełdowski
Warsaw School of
Economics & PSEAP



Filip Wejman
INPRIS - Institute for Law
and Society



ORGANIZING COMMITTEE



Katarzyna Metelska-Szaniawska

Faculty of Economic Sciences, University of Warsaw & PSEAP - President



Dr. Rafał Stroiński

Faculty of Law and
Administration, University of
Warsaw & PSEAP



Jarosław Bełdowski

Warsaw School of
Economics & PSEAP



Witold Bartosiewicz

Student's Association of Law
and Economics, University of
Warsaw



Paweł Jabłoński

Student's Association of Law
and Economics, University of
Warsaw



Tomasz Mielniczuk

Student's Association of
Institutional Economics,
University of Warsaw



Krzysztof Sobieski

Student's Association of Law
and Economics, University of
Warsaw



KEYNOTE LECTURE



Prof. Dr. Stefan Voigt

New Trends in Law & Economics: Economic Effects of Constitutional Law

Prof. Stefan Voigt is director at the Institute of Law & Economics at Hamburg University. He is a fellow with CESifo (Munich) and has been affiliated with the International Centre for Economic Research (ICER) in Torino, Italy. Previous positions include chairs at the Universities of Marburg, Kassel, Ruhr-University Bochum, a fellowship at the Institute for Advanced Study in Berlin, and a research fellow position with the Max-Planck-Institute for Research into Economic Systems. His research focuses on the economic effects of constitutions. More specifically, current research focuses on the economic effects of the judiciary. Prof. Voigt is one of the editors of the Review of Law & Economics and a member of various boards including those of Public Choice and Constitutional Political Economy. Prof. Voigt has consulting experience with both the public and the private sector. He has worked with the World Bank, the European Commission and the OECD but also with the European Round Table of Industrialists (ERT).

A NOTE ON THE ECONOMIC APPROACH TO CONSTITUTIONS

Economics is essentially a social science concerned with the conditions and principles of making choices. Until recently economic theory focused on making choices within certain institutional structures. It was assumed that such structures constitute constant, exogenous constraints on the choices that were made. In the 1950s a new research program developed – later known as Constitutional Economics – which allowed for broadening the research field of economics by introducing analysis of the choice of these constraints (the “rules of the game”) with the use of standard tools of economic analysis. Although issues such as the structure of power in the state and the relationship between an individual and the state have constituted a subject of concern of political thinkers and legal scholars since ancient times, an economic approach to these issues allows for a better understanding of the relationship between constitutions and economic performance.



INSTITUTIONAL ORGANIZERS



PSEAP

Polskie Stowarzyszenie Ekonomicznej Analizy Prawa

POLISH ASSOCIATION OF LAW & ECONOMICS (PSEAP)

President – **Dr. Katarzyna Metelska-Szaniawska**

Board Members – **Jarosław Beldowski, Dr. Stanisław Cichocki, Dr. Jacek Czabański, Dr. Rafał Stroiński**

Polish Association of Law and Economics (*Polskie Stowarzyszenie Ekonomicznej Analizy Prawa* – **PSEAP**), founded in 2005, gathers Polish academics involved in Economic Analysis of Law and aims, in particular, at promoting the scientific movement of Law & Economics in Poland by introducing initiatives developing this field, organizing seminars and conferences, as well as collecting and spreading knowledge.

PSEAP has organized guest lectures and visits to Poland of subsequent Presidents of the European Association of Law and Economics – Prof. Dr. Hans-Bernd Schaefer (in 2006) and Prof. Dr. Roger Bowles (in 2008), as well as three editions of Seminar Series regarding Economic Analysis of Law (2007/2008, 2008/2009, and 2009/2010). The Association issues peer-reviewed *PSEAP Working Papers*. Active involvement of PSEAP Board Members has resulted in publishing the Polish-language edition of Robert Cooter and Thomas Ulen's *Law and Economics* and bringing the European Master of Law and Economics international study program to Warsaw (studies within this program in Warsaw will begin in 2011).

Past initiatives of PSEAP were supported by, *inter alia*, the National Bank of Poland, Ministry of Justice of the Republic of Poland and University of Warsaw.

Contact: info@pseap.org



CENTRE OF ECONOMIC ANALYSIS OF THE PUBLIC SECTOR AT FACULTY OF ECONOMIC SCIENCES, UNIVERSITY OF WARSAW

Centre of Economic Analysis of the Public Sector (*Ośrodek Analiz Ekonomicznych Sektora Publicznego* – **OAESP**), founded in 2009, is a research institute at Faculty of Economic Sciences, University of Warsaw. Its main objective is to produce high quality research in Public Economics. OAESP is also involved in preparing expert opinions on outside research contracts. Currently the Centre is, *inter alia*, engaged in a research project aiming at a complex economic assessment of the schemes of financing Polish higher education put forward recently within two proposals of strategies of higher education development in Poland until 2020.

OAESP has been well integrated in the international research community which manifests itself in lively research cooperation and access to the newest research findings. Thanks to this, OAESP participates actively in economic policy debate concerning the public sector, both in Poland as well as abroad. In addition to their research efforts, OAESP researchers are involved in teaching activities at the University.

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Koło Naukowe Ekonomicznej Analizy Prawa im. Adama Smitha

STUDENTS' ASSOCIATION OF LAW AND ECONOMICS AT FACULTY OF LAW AND ADMINISTRATION, UNIVERSITY OF WARSAW AND WARSAW SCHOOL OF ECONOMICS

President – **Krzysztof Sobieski**

Scientific Tutor – **Dr. Rafał Stroiński**

Students' Association of Law and Economics (*Koło Naukowe Ekonomicznej Analizy Prawa – KNEAP*) is a non-profit organization of university students who are dedicated to the promotion of the economic approach to legal aspects and indicating connections between law and economics. KNEAP's other goals include promotion of the free market and deregulation, analyzing how legal norms affect the national economy and welfare, evaluation of newly proposed law under the criteria of effectiveness, necessity and its impact on the economy.

KNEAP achieves these goals by organizing conferences, meetings and lectures referring to legal and economic topics. Recently the Association established a website dedicated to promote law and economics among university students (www.kneap.wordpress.com).

While preparing the 1st Polish Law & Economics Conference, members of the Association were responsible mainly for preparing the Best Student Paper Prize contest, promotion of the Conference in the student community, design and fundraising.

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**KOŁO NAUKOWE
EKONOMII
INSTYTUCJONALNEJ**

STUDENTS' ASSOCIATION OF INSTITUTIONAL ECONOMICS AT FACULTY OF ECONOMIC SCIENCES, UNIVERSITY OF WARSAW

President – **Tomasz Mielniczuk**

Scientific Tutor – **Dr. Katarzyna Metelska-Szaniawska**

Students' Association of Institutional Economics (*Koło Naukowe Ekonomii Instytucjonalnej – KNEI*), registered in 2009, is a non-profit organization of students of economics and other social sciences (law, in particular) who are dedicated to the development of interdisciplinary connections between economics and those other disciplines. The main fields of research include: New Institutional Economics, Public Sector Economics, Public Choice and Law & Economics. Recently members of the Association cooperated with the Centre of Economic Analysis of the Public Sector (Faculty of Economic Sciences, University of Warsaw) in preparing a study concerning new strategies of financing higher education in Poland. Members of KNEI assessed different methods of increasing accessibility to higher education, examined possibilities to foster the system of student loans and conducted a broad public opinion study about financing higher education in Poland. In the next academic year KNEI plans to start issuing Working Papers and organize a debate for students of economics about job perspectives in the public sector.

Currently the most important project is co-organizing the 1st Polish Law & Economics Conference. In particular, members of KNEI were involved in organizing the Best Student Paper Prize contest, which resulted in selecting best students' papers regarding Law & Economics that will be presented during the conference.

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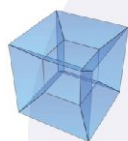
STUDENTS' ASSOCIATION OF BANKING LAW AT FACULTY OF LAW AND ADMINISTRATION, UNIVERSITY OF WARSAW

President – **Rafał Kożuchowski**

Scientific Tutor – **Dr. hab. Remigiusz W. Kaszubski**

Students' Association of Banking Law (*Koło Naukowe Prawa Bankowego – KNPB*) is a one of its kind organization of students interested in banking law in Poland. KNPB members focus on analyzing the functions of banking, broadening knowledge and writing articles about financial institutions. The Association organizes events such as the Polish Convention on Banking Law and the Conference on prospects of the student's card in Poland. Moreover, thanks to KNPB's close relations with banking institutions the Association provides its members with possibilities to gain practical experience at these organizations.

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Koło Naukowe
PRAWA RYNKÓW KAPITAŁOWYCH

STUDENTS' ASSOCIATION OF CAPITAL MARKETS AT FACULTY OF LAW AND ADMINISTRATION, UNIVERSITY OF WARSAW

President – **Michał Arabczyk**

Scientific Tutor – **Prof. Aleksander Chłopecki**

Students' Association of Capital Markets (*Koło Naukowe Prawa Rynków Kapitałowych*) was registered in 2008. It gathers students who are not only interested in Polish, European and US regulations of stock exchange but also private equity and venture capital funds. The Association organizes regular meetings with widely known lawyers who are specialists in capital markets' law. After every meeting there is a discussion to enable students to exchange their ideas and let them better understand the subject. The Association concentrates especially on new changes in law (such as the MIFID directive, AIFM directive project) and comparative law.



ABSTRACTS

REASONS FOR RELATIONSHIPS BETWEEN LONG-TERM TRENDS IN THE ECONOMY AND QUANTITATIVE CHANGES IN THE LAW-MAKING PROCESS

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Abstract

The article describes the reasons for the correlation between changes in the number of universally valid legal acts introduced and changes in the national economy. The theory about the reasons for this correlation is based on the assumption that economic man usually acts in accordance with ready-made activity patterns, accepted by society, which include rules that are classified into three basic categories: rules governing the acquisition of goods through exchange of goods and money, rules for obtaining goods as a result of being a member of a community, and legal norms, the key function of which is to popularise and protect the rules created within the two first categories. The co-existence of rules deriving from different categories within one activity pattern results in feedback. As a result, the supply of and demand for specific types of activity rules changes, as does the degree of their formalisation, by including them in the legal system. Consequently, the process of creating sources of law undergoes quantitative changes which demonstrate features of long-term trends that are positively or negatively correlated with changes in the national economy. The quantitative changes that occur in the process of creating a source of law are a consequence of relevant changes in the national economy. This relationship may be identified based on empirical research, the methodology and selected results of which are discussed in the article. The results of empirical research confirm the hypothesis that the system of activity patterns of economic man in society is becoming increasingly complex and increasing the general costs of functioning, mainly as a result of competition for access to the most effective methods of acquiring goods. The evolution of a system of activity patterns is aimed at reducing the advantage of entities with significant potential and increasing the quantity of models for the acquisition of goods by virtue of being a member of a community.

INTERJURISDICTIONAL LINKAGES AND THE SCOPE FOR INSTITUTIONAL HARMONIZATION

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Abstract

We study the desirability of interventionist harmonization of legal standards across multiple, mutually interdependent jurisdictions which strive to adapt law to their local conditions as well as to synchronize it with other jurisdictions. In a setting where jurisdictions are privately informed about their local conditions, we contrast the regime of decentralized standard-setting with two means of interventionist harmonization: through centralization and through delegation of lawmaking authority to a particular jurisdiction. Our analysis illuminates the importance of patterns of interjurisdictional linkages in delineating the scope for, and the appropriate means of, institutional harmonization. We find that greater jurisdictional interdependence - the hallmark of globalization - per se does not justify interventionist harmonization unless increased interdependence results in notable asymmetries in the pattern of jurisdictional interdependence. We also show that, in the presence of cross-jurisdictional externalities, institutional harmonization is, contrary to conventional predictions, not desirable when local preferences are homogeneous across jurisdictions.



AN EMPIRICAL MACROECONOMIC MODEL OF CRIME FOR POLAND

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Abstract

Identification and quantification – at a macro level – of factors determining crime in Poland in the years 1970-2005 was carried out in the article, with an emphasis given to the deterrence effect. The narration is illustrated with appropriate examples, with Poland being a benchmark. At the stage of equations' specification – which was supported by referring to recognized theories of crime – no initial gradation was done with respect to relative significance of possible determinants of crime, the effect of which was implementation of stepwise regression. The following groups of crime were subject to investigation: (i) total, (ii) violent, (iii) property crimes, (iv) other crimes, and (v) total social costs of crime. In the light of the obtained results, the causes of the increasing crime should be associated in the first place with deteriorating social development – among which economic inequality plays the leading role – as well as with lenient penitentiary policies. This cannot be counterbalanced by economic growth solely, which reduces the scale of crime.

INSTITUTIONAL APPROACH TO OPTIONAL ELEMENTS IN EUROPEAN DIRECTIVES

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Abstract

Directives are one of the most important ingredients in the EU legislative menu. From a structural perspective, they contain both prescriptive provisions and provisions allowing MS for some degree of flexibility at the implementation stage. The margin of choice left to MS is usually an outcome of the legislative process designed to accommodate differing interests and demands of 27 national bargaining actors and also that of the EC institutions competing with each other for reputation or other reasons. Another explanation for the MS' discretion lies in the competence limits of the EU legislator. Assuming away these two explanations, being a domain of political economy and constitutional studies respectively, this paper puts forward another justification for the discretion which MS enjoy when transposing EU law to domestic legal systems. From the regulatory theory standpoint, the flexibility elements built into directives can be viewed as 'regulatory options' whereby an imperfectly informed EU legislator delegates final legislative choice to MS who potentially have superior information. However, in the current EU setting, i.e. in the absence of appropriate institutional framework, regulatory options might have also efficiency reducing effects. This paper puts forward a proposal for an institutional framework managing the exercise of options to improve market integration and accommodate differences among the MS. The aim of this framework is to prevent implementation problems *ex ante* and avoid infringement procedures *ex post*.



PRIVATE REGULATION IN THE EC: THE EXAMPLE OF SINGLE EURO PAYMENTS AREA

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Abstract

In recent years, an increased involvement of private actors in regulatory activities can be observed at global, European and national levels. Forms of this involvement are wide-ranging. Most remarkably, private actors, primarily trade associations and networks of firms, are developing private rules and standards; either independently or in cooperation with public bodies. In addition, private actors can be entrusted with monitoring and enforcement of public rules, or conversely, public bodies can monitor compliance with and enforce private rules.

At the European level endorsement of self- and co-regulation is considered to be a component of the better regulation agenda. Better regulation aims at more efficient and effective regulations, assuring that the regulatory burden is proportionate to the regulatory aim and counterbalanced by the benefits yielded by the regulatory intervention. The improvements in the lawmaking process should contribute to the achievement of these objectives. The launch of the Single Euro Payments Area (SEPA) marks the most spectacular manifestation of these developments.

This paper analyzes the governance structure of the European Payments Council (EPC) which is the regulatory body responsible for the design of SEPA, as well as the regulatory design in place. It examines whether they ensure accountability, interest-representation and transparency of regulatory processes. It also scrutinizes the extent to which the regulatory design for SEPA assures the achievement of the regulatory objectives underlying the payments sector. Building on both, public and private interest theories of regulation, this paper analyzes whether SEPA can be perceived as a successful illustration of private regulation.

TAX SYSTEM AS A FACTOR ATTRACTING INVESTMENT INTO THE EUROPEAN UNION MEMBER COUNTRIES

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Abstract

This work discusses the relationship among institutional tax competition, economic theory on investment attractiveness and location of enterprises in the European Union. While tax competition literature is well developed, the value added of this text is to intertwine institutional economics with mainstream economics to explain the mechanism of tax systems competition and its impact on economy. It begins with a discussion of economic theories and it progresses to the presentation of historical and current tax systems of EU member countries. At the end, the author shows the impact of tax systems competition on economic growth. These outcomes are greatly varied but overall they support a conclusion that economic growth is directly related to transparent and simple tax systems as well as to imposition of taxation on different sources of capital. Given that, taxation is only one mechanism aiding economic growth and cannot be used successfully without other stable macroeconomic fundamentals.



DO MARKETS EVER FAIL? RECONCILING THE CONSEQUENTIALIST AND THE DEONTOLOGICAL APPROACHES TO THE MARKET PROCESS

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Abstract

This paper focuses on the theoretical conflict between the socio-economic and the law and economics visions of the state-market relationship. By analysing the main arguments of both approaches on the role of the governments in economic life, the task of the paper is to find a common denominator between these apparently polar views. The proposed solution is situated in the notion of 'two-handed markets' – the roots of this idea has been developed inter alia by the Italian school of constitutionalism (e.g., Einaudi and Amato). Methodologically, this paper attempts to internalise into the domain of political economy the deliberation techniques, developed in moral philosophy. The parallels between two areas can be observed not only on the empirical level, but also genealogically as the former originates from the latter. The paper introduces a dialectical method of analysis which enables two-step perception of the market process. This analysis is market-centric at the first stage and community-centric at the second stage. Market failures should not only be seen as an inability of markets to deliver constantly the best desirable outcomes for the economy. There is another meaning of market failure which is analyzed by this paper.

REGULATORY RESTRICTIONS OF DOING BUSINESS IN POLAND. QUANTITATIVE ANALYSIS OF REGULATION IN PERIOD 1989-2009

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Abstract

Economic freedom, which is the basis of the economic system and one of the most crucial development factors, is significantly restricted. Numerous regulations and restrictions in the economic activity occur virtually in all countries. The research shows varied levels of regulations and their quality. The undertaken study aimed to reveal and document variations and the extent of regulatory restrictions of economic activity in the Polish economy in 1989-2009. The study identifies all regulations restricting the pursuit of economic activity in the Polish law, including such forms as: concessions, business activity permits and licenses, admissions of products, goods or equipment to market, admissions to a profession, limitations of production or sales and notifications of economic activity. The results of the study performed with proprietary methodology indicate an increase of economic areas subject to restrictions in the period under review and an increased number of restrictions.

The results of our study indicate an beginning of transition ca. 400 cases of restrictions coming from the legislation in 121 economic areas. After 20 years of developing market economy ca. 750 restriction was indicated in more 250 areas of economic activity. Excessive restrictions in economic activity implemented by the state result in weakened competitiveness of the economy and may cause a long-term high unemployment rate and decreased economic growth. The presented method should be applied to constant monitoring of legislative activities, both quantitative and qualitative. Moreover, it may help calculate administrative costs to be borne by entrepreneurs and it may be used in further international comparative studies.



PUBLIC-PRIVATE PARTNERSHIP MISUSE: CASE STUDY

Wojciech Deja

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Abstract

The presentation casts light at public-private partnership (PPP), a potentially efficient mechanism of fulfilling duties of public authorities. So as to provide a community with desired goods of common use a legally-binding contract is signed between a local government and a private firm, according to which responsibilities and business risks are allocated along the respective partners. However, despite a decent rationale behind PPP, asymmetry of bargaining power, activity of lobbyists or political influences may result in extortions taken advantage of by the stronger party at the cost of the expected final beneficiary of the agreement, the community.

One of the spheres in which PPP contracts are the most extensively used is financing sports arenas. Such practice originates from the motherland of PPP agreements, the USA, where the major leagues' venues require a throughout financial cooperation between the public authorities and private owners of respective teams.

On the basis of this ample market a case study is carried out. It concerns the most controversial PPP application in the recent years which regards financing a new arena in Renton for an NBA team Seattle SuperSonics. The aim of the research is to find the factors that determine a relative public participation in the PPP agreement for funding sports arenas for the major leagues in the USA. Once a general model is proposed, a forecast for the Renton arena case is computed. Not only do the demands of the owners of the Seattle SuperSonics diverge from the forecast significantly, but also they exceed the upper bounds of confidence intervals of the forecast at very low confidence levels. The findings of a general ordinary least squares model are consistent with those of the models specified for fractional response variables.

As a possible extension it is suggested how in the case under investigation econometric modeling may be applied as piece of evidence in court proceedings on the breaches of good faith clauses.

REGULATORY REFORM - STATE OF PLAY

Otylia Trzaskalska-Stroińska

Department of Economic Regulations, Ministry of Economy



Increasing competitiveness of the European economy is one of the priorities of the Lisbon Strategy. The most significant reform in Poland aimed at improving regulatory environment is the Regulatory Reform carried out by the Ministry of Economy. The aim of the programme, based on the best European practices, is to create an evidence-based legislation system and to remove barriers affecting entrepreneurs, especially the SMEs. The programme combines a set of three cross-linked activities:

Improvement of Regulatory Impact Assessment (RIA) system

RIAs are prepared to ensure high quality of proposed regulations providing an assessment of the costs, benefits and risks of a proposal on the society. RIAs identify and assess all the options, both regulatory and non-regulatory and determine whether the benefits justify the costs. The RIA process helps policy makers to think through the consequences of proposals, improving the quality of advice to Ministers and encouraging informed public debate. RIA reform also includes improvement of social consultations, by creating "consultations on-line".

Reduction of administrative burdens (AB)

The term administrative burdens means the duties imposed administratively on businesses such as: completing forms, obtaining permits, undergoing inspections, etc. It is an initiative of the European Commission to eliminate unnecessary red tape constraints by all the Member States. Consequently, in March 2008 Polish Government adopted targets for cutting the AB in seven selected priority areas of law by 25% until the end of 2010. Apart from this, the Ministry of Economy is under way of preparing reduction scheme for the whole branch of economic law.

Simplification of existing regulations

The aim of the simplification is to remove barriers for entrepreneurs by changing business unfriendly law and limiting the administrative control over setting up and conducting business activity. The acts selected to be changed consist the so called Package for the Entrepreneurship. Since the beginning of the initiative in 1998, sixteen acts of the Package came into force, further eighteen are being prepared. And this list is not yet closed.



KONKURS DLA STUDENTÓW (BEST STUDENT PAPER PRIZE)

W ramach 1st Polish Law & Economics Conference Komitet Organizacyjny konferencji ogłosił **Konkurs na najlepszą pracę studencką o tematyce dotyczącej ekonomicznej analizy prawa**. Studenci biorący w nim udział nadsyłali do 2. kwietnia prace o objętości 10-15 stron. Spośród nadesłanych prac członkowie Komitetu wybrali cztery najlepsze, których autorzy wygłoszą 15-minutowe prezentacje podczas panelu studenckiego 1st Polish Law & Economics Conference.

Dziękujemy wszystkim uczestnikom konkursu a autorom nagrodzonych prac gratulujemy!

I NAGRODY NIE PRYZNANO

II NAGRODA

Michał Gintowt

Uniwersytet Warszawski

„Asymetria informacji jako ratio legis instytucji rękojmi w świetle ekonomicznej analizy prawa”

II NAGRODA

Piotr Semeniuk

Uniwersytet Jagielloński

„Ekonomiczna analiza interwencji humanitarnej w kontekście Raportu Komisji ds. Interwencji i Suwerenności Państw”

III NAGRODA

Anna Laszczyk

Uniwersytet Warszawski

„More economic approach w prawie konkurencji Unii Europejskiej – ocena metod nowego podejścia i perspektywy na przyszłość”

IV NAGRODA

Piotr Ziółkowski

Uniwersytet Warszawski

„Ekonomiczna analiza ograniczonej odpowiedzialności oraz tzw. odpowiedzialności przebijającej ze szczególnym uwzględnieniem zgrupowania spółek na przykładzie prawa amerykańskiego. Wnioski dla prawa polskiego”



II NAGRODA

Michał Gintowt

Uniwersytet Warszawski

„Asymetria informacji jako ratio legis instytucji rękojmi w świetle ekonomicznej analizy prawa”

Celem artykułu jest przedstawienie, na przykładzie rękojmi za wady rzeczy sprzedanej, możliwości badania prawa, a przede wszystkim ratio legis poszczególnych jego instytucji, z uwzględnieniem postulatów analizy ekonomicznej. Na wstępie omówione zostało twierdzenie Coase’a stanowiące jedno z podstawowych założeń teoretycznych tego kierunku. W dalszej kolejności artykuł przedstawia asymetrię informacji (asymmetrical distribution of information) jako wadliwość rynku oraz źródło kosztów transakcyjnych. W tym kontekście analizie poddana zostaje konstrukcja instytucja rękojmi za wady fizyczne i prawne rzeczy sprzedanej (art. 556 i nast. kodeksu cywilnego). Opisane zostają także, z zastosowaniem przede wszystkim elementów teorii gier, kwestie związane z praktycznym funkcjonowaniem rękojmi i jej wpływem na ekonomiczne decyzje podmiotów rynkowych.

II NAGRODA

Piotr Semeniuk

Uniwersytet Jagielloński

„Ekonomiczna analiza interwencji humanitarnej w kontekście Raportu Komisji ds. Interwencji i Suwerenności Państw”

W zaprezentowanym referacie autor stara się dokonać opisu problematycznej w prawie międzynarodowym tzw. interwencji humanitarnej pod kątem, kluczowego dla ekonomicznej analizy prawa, kryterium efektywności. Wnioski wypływające z dokonanej analizy autor porównuje z wnioskami uzyskanymi przez Komisję ds. Interwencji i Suwerenności Państw, znanego międzynarodowego ciała eksperckiego powołanego w 2000 r. w celu określenia przesłanek dopuszczalności interwencji humanitarnej.

Referat składa się z dwóch części. W pierwszej części autor dokonuje analizy interwencji humanitarnej pod kątem ontologicznym tzn. stara się odpowiedzieć na pytanie, w jaki sposób korzystając z narzędzi dostarczanych przez ekonomiczną analizę prawa zdefiniować zjawisko interwencji humanitarnej. Do uzyskania definicji interwencji humanitarnej pomocna okazuje się teoria firmy oraz tzw. teza o strukturalnej analogii rozwinięta przez J.L. Dunoffa i J. Trachtmana. Nie mniej jednak obie te teorie nie są wystarczające do oddania istoty omawianego zjawiska. Według autora dopełniającym założeniem dla pełnego zdefiniowania interwencji humanitarnej jest pojęcie wzajemnego obowiązku moralnego państw.

W drugiej części referatu autor zajmuje się technicznym aspektem interwencji humanitarnej tzn. stara się odpowiedzieć na pytanie, jaki sposób przeprowadzenia interwencji jest najbardziej efektywny. Jak się okazuje wnioski z analizy technicznego aspektu interwencji humanitarnej są w zaskakujący sposób bliskie kryteriom dopuszczalności interwencji humanitarnej sformułowanym przez Komisję.



III NAGRODA

Anna Laszczyk

Uniwersytet Warszawski

„More economic approach w prawie konkurencji Unii Europejskiej – ocena metod nowego podejścia i perspektywy na przyszłość”

Niniejsza praca koncentruje się na przybliżeniu i ocenie nurtu ekonomizacji prawa konkurencji Unii Europejskiej nazywanego *more economic approach*. Poczynając od krótkiego zarysu spornego zagadnienia dotyczącego celów regulacji antytrustowych, jako podstawy do wprowadzenia ekonomicznych środków analizy, poprzez przedstawienie metod stosowanych w poszczególnych obszarach prawa antymonopolowego (fuzje, zakazane porozumienia naruszające konkurencję, nadużycia pozycji dominującej), celem pracy jest próba weryfikacji skutków nowego podejścia. Przedmiotowe opracowanie podejmuje problemy wynikające z przyjęcia *more economic approach*, takie jak: niebezpieczeństwo relatywizacji norm, wzrost niepewności prawa, wzrost kosztów i wydłużenie postępowań, zagadnienie *bright line tests* oraz konflikt między zasadami *per se* a zasadą rozsądku w stosowaniu prawa. Wobec prezentowanego poglądu niezbędności stosowania metod ekonomicznych, jako rozwiązanie wskazuje się m.in. stosowanie norm optymalnie zróżnicowanych, czego przykładem są regulacje typu *safe harbours*.

IV NAGRODA

Piotr Ziółkowski

Uniwersytet Warszawski

„Ekonomiczna analiza ograniczonej odpowiedzialności oraz tzw. odpowiedzialności przebijającej ze szczególnym uwzględnieniem zgrupowania spółek na przykładzie prawa amerykańskiego. Wnioski dla prawa polskiego”

Celem pracy jest próba ekonomicznej analizy zagadnienia ograniczonej odpowiedzialności w spółkach kapitałowych oraz tzw. odpowiedzialności przebijającej (*piercing the corporate veil*) ze szczególnym uwzględnieniem problematyki grup kapitałowych. Jest to głos w dyskusji na temat projektu nowelizacji kodeksu spółek handlowych, który ma stworzyć podstawy dla prawa holdingowego. Dotychczasowe wypowiedzi przedstawicieli doktryny w Polsce nie uwzględniały dorobku *Law and Economics* w odniesieniu do problematyki zgrupowań spółek. Tematyka ta jest nie tylko skomplikowana, jak pokazały dzieje projektu IX Dyrektywy Unii Europejskiej dotyczącej koncernów, ale również fakt, iż z prawem grup kapitałowych oraz jej centralnym zagadnieniem odpowiedzialności przebijającej nie poradziły sobie ustawodawstwa większości państw europejskich. Warto więc przyrzeć się dorobkowi doktryny amerykańskiej w tym zakresie. Prawno-ekonomiczny argument opieram na twierdzeniu Coase'a, którego założeniem jest aby stanowione przez ustawodawcę prawo odpowiadało rozwiązaniom jakie osiągnęłyby negocjujące strony w warunkach idealnej, hipotetycznej sytuacji określonej jako stan faktyczny, w którym nie istnieje asymetria informacji, strony mogą swobodnie kontraktować, a koszty transakcyjne są równe zeru.

W pracy poddaję ekonomicznej analizie przesłanki potrzebne dla zastosowania odpowiedzialności przebijającej w prawie amerykańskim oraz pozycję zarówno wierzyciela kontraktowego jak i deliktowego. Przedstawione wnioski przeczą popularnej tezie jakoby tylko w sytuacji szkody powstałej *ex delicto* należało sięgnąć do majątku osobistego współników spółki kapitałowej.



Robert
Cooter & Thomas
Ulen

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Podręcznik polecany przez Polskie Stowarzyszenie Ekonomicznej Analizy Prawa

- Co powinno stanowić własność prywatną, a co publiczną?
- Jakie środki ochrony prawnej powinny przysługiwać w przypadku naruszenia umowy?
- Jak należy zorganizować system odszkodowań dla ofiar zaniedbań lekarskich?
- Które czyny powinny być karalne i w jakim stopniu?

System prawny każdego państwa musi udzielić odpowiedzi na każde z tych pytań oraz na wiele innych. Law & Economics proponuje spojrzenie na te zagadnienia z perspektywy analizy ekonomicznej. Niniejsza publikacja to jeden z najpopularniejszych podręczników z zakresu ekonomicznej analizy prawa na świecie. Pierwsze trzy rozdziały książki zawierają przegląd niezbędnej wiedzy z zakresu podstaw ekonomii oraz prawa. Następnie autorzy przedstawiają w dziewięciu rozdziałach podejście z perspektywy ekonomicznej do prawa rzeczowego, prawa umów, prawa deliktów, procedury sądowej oraz prawa karnego.

Podręcznik jest uznawany za **najbardziej wszechstronne wprowadzenie do ekonomicznej analizy prawa** adresowane do szerokiego grona odbiorców – studentów prawa, ekonomii i innych nauk społecznych, przedstawicieli świata nauki, praktyków zaangażowanych w tworzenie i egzekwowanie prawa oraz innych osób zainteresowanych tym nowatorskim interdyscyplinarnym ruchem naukowym.



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