

3RD POLISH LAW & ECONOMICS CONFERENCE

WARSAW





■ UNIVERSITY OF WARSAW
APRIL 20-21, 2012 BALL HALL

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■ WELCOME

It is our pleasure to welcome you to 3rd Polish Law & Economics Conference.

Held under patronage of the Deans of Faculty of Law and Administration and Faculty of Economic Sciences of the University of Warsaw, *3rd Polish Law & Economics Conference* is the subsequent major academic event in the field of Law & Economics in Poland after the success of *1st and 2nd Polish Law & Economics Conferences* organized in 2010 and 2011. The main aims of the Conference are to present the up-to-date academic achievements of the scientific movement of Law & Economics and provide an impulse for further development in this respect. Additionally, the Conference is a unique opportunity to present Polish Law & Economics to an international audience. By bringing together researchers from various countries *3rd Polish Law & Economics Conference* also provides a platform for cooperation between Law & Economics scholars in Poland, Central and Eastern Europe, and the rest of the world.

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 several 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*).

We look forward to meeting you in Warsaw!

On behalf of the Organizing Committee

DR. KATARZYNA METELSKA-SZANIAWSKA



DAY 1: FRIDAY, APRIL 20, 2012

- 9:30 - 10:00 REGISTRATION
- 10:00 - 10:15 CONFERENCE OPENING
- 10:15 - 12:00 **KEYNOTE LECTURE: PROF. THOMAS ULEN**
The Lessons of 30 Years of Law & Economics - and the Future
- 12:00 - 12:15 COFFEE BREAK
- 12:15 - 14:15 **SESSION 1: ECONOMICS OF CRIME**
Chairman: JACEK CZABAŃSKI (European Parliament & PSEAP)
- **MICHELE MOSCA, SALVATORE VILLANI** (University of Naples Federico II), *The Reuse for Social Aims of Illegal Assets and the Competition Policy. A New Network Strategy to Defeat Organized Crime*
Discussant: Michał Królikowski (University of Warsaw)
 - **MARTIN A. LEROCH** (University of Mainz), **JOHANNES SCHWARZE** (University of Hamburg), *Criminal Identities: A Behavioral Economic Analysis of Terrorism*
Discussant: Magdalena Małecka (Polish Academy of Sciences)
 - **CRISTIANO AGUIAR DE OLIVEIRA, GIÁCOMO BALBINOTTO NETO** (Federal University of Rio Grande do Sul), *The Deterrence Effects of Gun Laws in Games with Asymmetric Skills and Information*
Discussant: to be announced
- 14:15 - 15:00 LUNCH
- 15:00 - 17:00 **SESSION 2: LAW & PUBLIC POLICY**
Chairman: GRZEGORZ KULA (University of Warsaw)
- **JAROSŁAW KANTOROWICZ** (University of Hamburg), *Fiscal Legal Framework in Switzerland: Lessons for Poland*
Discussant: Michał Brzoza-Brzezina (National Bank of Poland)
 - **RAHUL SURESH SAPKAL** (University of Hamburg), *Note on Optimum Labour Market Regulation in Developing Countries: A Law and Economics Perspective*
Discussant: Joanna Tyrowicz (University of Warsaw)
 - **GIÁCOMO BALBINOTTO NETO, EVERTON NUNES DA SILVA, ANA KATARINA CAMPELO** (Federal University of Rio Grande do Sul), *The Impact of Presumed Consent Law on Organ Donation: An Empirical Analysis from Quantile Regression for Longitudinal Data*
Discussant: Waldemar Florczak (University of Łódź)
- 17:00 - 17:15 COFFEE BREAK
- 17:15 - 19:15 **STUDENT PANEL**
Chairman: ANNA ŁASZCZYK (Students' Association of Institutional Economics)
Presentations delivered by winners of the Best Student Paper Prize
- **KAMIL JOŃSKI** (Warsaw School of Economics), *Does Quick Mean Better? Measuring the Deterrent Effect of the '24 Hour Courts'*
 - **IWO MAŁOBEŃCKI** (University of Warsaw), *Per se Approach v. Rule of Reason. Tying and Bundling in European Competition Law – a Legal and Economic Analysis*
 - **JAKUB MICHALIK** (Jagiellonian University), *Can Resolution of the Clash Between Freedom of Speech and Personal Interests Be Economically Efficient? Article 22 of the Draft of the New Polish Civil Code in an Economic Perspective*

DAY 2: SATURDAY, APRIL 21, 2012

- 9:30 - 11:30 **SESSION 3: POLITICAL ECONOMY & REGULATION**
Chairman: KATARZYNA METELSKA-SZANIAWSKA (University of Warsaw & PSEAP)
- **ŁUKASZ GOCZEK** (University of Warsaw), *Regulatory Causes of Corruption*
Discussant: Waldemar Florczak (University of Łódź)
 - **ALEXANDER WAKSMAN, VALERIO ROMANO** (LUISS Guido Carli), *Corruption and Effort among Political Agents: Analysing Incentives and Evidence from the UK and Italy*
Discussant: Paweł Chmielnicki (University of Information Technology and Management in Rzeszów)
 - **JAN FAŁKOWSKI** (University of Warsaw), *Rural Policy and Political Accountability: Looking at the Pilot Programme Leader+ in Poland*
Discussant: Leszek Skiba (National Bank of Poland)
- 11:30 - 11:45 COFFEE BREAK
- 11:45 - 13:00 **SESSION 4: ECONOMIC ANALYSIS OF EUROPEAN LAW & INSTITUTIONS**
Chairman: JAROSŁAW BEŁDOWSKI (Warsaw School of Economics & PSEAP)
- **PENIO PENEV GOSPODINOV** (Erasmus University of Rotterdam), *European Court of Justice vs. Arbitral Tribunals: The Role of Preliminary Ruling Where European "Public Policy" is at Stake*
Discussant: to be announced
 - **PRZEMYSŁAW MIKŁASZEWICZ** (Court of Justice of the European Union & PSEAP), *National Judge's Incentives (Not) to Seek a Preliminary Ruling from the Court of Justice of the EU in the Context of National and EU Constitutional Framework*
Discussant: Michał Dąbrowski (Ministry of Justice)
- 13:00 - 14:15 **SESSION 5: TOPICS IN LAW & ECONOMICS**
Chairman: FILIP WEJMAN (INPRIS - Institute for Law and Society)
- **MIREIA ARTIGOT I GOLOBARDES** (Universitat Pompeu Fabra), *Avoiding Waste in European Product Regulation: The Nexus of Ex Ante Safety and Ex Post Liability*
Discussant: Oskar Luty (DFL Legal)
 - **PATRYK GAŁUSZKA, VICTOR BYSTROV** (University of Łódź), *Development of Crowdfunding in Poland from the Perspectives of Law and Economics*
Discussant: Olgierd Porębski (Polish Crowdfunding Society, Czarnik Porębski i Wspólnicy)
- 14:15 - 14:20 CONFERENCE CLOSING
- 14:20 - 15:00 LUNCH
- 15:00 - 16:00 GENERAL ASSEMBLY OF THE POLISH ASSOCIATION OF LAW AND ECONOMICS (PSEAP)



SCIENTIFIC COMMITTEE



PROF. WIESŁAW CZYŻOWICZ
Warsaw School of Economics
& PSEAP



PROF. TOMASZ GIARO
Faculty of Law and Administration,
University of Warsaw



PROF. TADEUSZ SKOCZNY
Centre of Antitrust and
Regulatory Studies, Faculty of
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PROF. JERZY WILKIN
Faculty of Economic Sciences,
University of Warsaw



PROF. WOJCIECH ZAŁUSKI
Faculty of Law and Administration,
Jagiellonian University



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Faculty of Economic Sciences,
University of Warsaw & PSEAP



DR. JACEK CZABAŃSKI
European Parliament & PSEAP



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Faculty of Economics and Sociology,
University of Łódź & PSEAP



DR. MARIUSZ GOLECKI
Faculty of Law and Administration,
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METELSKA-SZANIAWSKA**
Faculty of Economic Sciences,
University of Warsaw & PSEAP



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Warsaw School of Economics
& PSEAP



ŁUKASZ GORYWODA
Université Libre de Bruxelles
& PSEAP



**AGNIESZKA JAŃCZUK-
GORYWODA**
Columbia University School
of Law & PSEAP

ORGANIZING COMMITTEE



**DR. KATARZYNA
METELSKA-SZANIAWSKA**
Faculty of Economic Sciences,
University of Warsaw & PSEAP (President)



JAROSŁAW BELDOWSKI
Warsaw School of Economics
& PSEAP



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Students' Association of Institutional
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PAWEŁ JABŁOŃSKI
Students' Association of Law
& Economics, University of Warsaw



ANNA LASZCZYK
Students' Association of Institutional
Economics, University of Warsaw



ADAM PAWLUCZYK
Students' Association of Institutional
Economics, University of Warsaw



MAGDALENA WERESA
Students' Association of Law
& Economics, Warsaw School
of Economics

CONFERENCE VOLUNTEERS:

- **JACEK LEWKOWICZ** (Students' Association of Institutional Economics, University of Warsaw)
- **ALINA NIEMIRO** (Students' Association of Institutional Economics, University of Warsaw)
- **MARCIN PIEKAŁKIEWICZ** (Students' Association of Institutional Economics, University of Warsaw)
- **OLGA SIWIECKA** (Centre for Economic Analyses of Public Sector, University of Warsaw)
- **MAGDALENA SMYK** (Students' Association of Institutional Economics, University of Warsaw)



■ KEYNOTE LECTURE



PROF. THOMAS S. ULEN

University of Illinois at Urbana-Champaign

“The Lessons of 30 Years of Law & Economics – and the Future”

Prof. Thomas S. Ulen received a bachelor's degree from Dartmouth College, a master's from St. Catherine's College, Oxford, and a Ph.D. in economics from Stanford University. He holds a Swanlund Chair (since 2010 Emeritus), one of the highest endowed titles on the Urbana-Champaign campus. In 2003-2010 he was director of the Illinois Program in Law and Economics. In addition, he is a research affiliate of the Environmental Council, a member of the Campus Honors faculty, and holds positions in the Department of Economics.

Recently, Prof. Ulen served as a visiting professor at University of Haifa and University of Maryland. Previously he held the foreign chair in international and comparative law at University of Ghent, has been a visiting professor in Germany and Slovenia, as well as served as a Ford Foundation Professor in Shanghai.

As a scholar, Prof. Ulen examines a variety of issues related to economics, legal scholarship, and legal education. He has recently completed work on the following books: *Cognition, Rationality, and the Law* (with R. Korobkin; forthcoming from University of Chicago Press), and *Empirical Methods in Law* (with R.M. Lawless and J.K. Robbennolt; 2010). His book *Law and Economics* (with R. Cooter), considered the best textbook in the field, now in its 6th edition, has been translated into Chinese, Japanese, Spanish, Korean, French, Russian, and Polish (1st edition 2009, 2nd edition 2011).

Prof. Ulen was a member of the founding board of directors of the American Law and Economics Association and has served as a member of the editorial board of several professional journals. He is also a co-organizer, with T. Ginsburg and R. McAdams, of the Midwest Law and Economics Association Annual Meeting at the College of Law.

■ INSTITUTIONAL ORGANIZERS

POLISH ASSOCIATION OF LAW & ECONOMICS



PSEAP

Polish Association
of Law & Economics

President - **Dr. Katarzyna Metelska-Szaniawska**
Board Members - **Jarosław Beldowski, Dr. Stanisław Cichocki,
Dr. Mariusz Golecki**

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, in particular, organized the following events:

- 1st and 2nd *Polish Law & Economics Conferences* at the University of Warsaw (in 2010 and 2011) - the first major scientific events in Poland devoted entirely to Law & Economics,
- guest lectures and visits to Poland of subsequent Presidents of the European Association of Law and Economics - Prof. Dr. Hans-Bernd Schaefer (in 2006), Prof. Dr. Roger Bowles (in 2008), and Prof. Dr. Eli Salzberger (in 2011, as keynote lecturer at 2nd *Polish Law & Economics Conference*),
- five editions of Seminar Series (2007-2012 – ca. 40 seminar meetings),
- Best Student Paper Prize competition (three editions) accompanying 1st, 2nd and 3rd *Polish Law & Economics Conferences*.

Active involvement of PSEAP Board Members resulted in publishing the Polish-language edition of R. Cooter and T. Ulen's *Law and Economics* (1st edition 2009, 2nd edition 2011).

PSEAP has also successfully supported bringing the European Master of Law and Economics (EMLE) international study program to Warsaw. PSEAP was granted the status of Associate Partner of EMLE.

Past initiatives of PSEAP were supported by, inter alia, the National Bank of Poland, Ministry of Justice of the Republic of Poland, BRE Bank Foundation, CMS Cameron McKenna, and University of Warsaw.

Contact: info@pseap.org

CENTRE FOR ECONOMIC ANALYSES OF PUBLIC SECTOR



CEAPS
CENTRE FOR ECONOMIC ANALYSES OF PUBLIC SECTOR

Director - **Dr. Jan Falkowski**

Centre for Economic Analyses of Public Sector (CEAPS), 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. CEAPS is also involved in preparing expert opinions on outside research contracts. Currently the Centre is engaged in a number of research projects concerning a plethora of different aspects of public sphere, from higher education, and good governance, to labour and land markets in rural areas.

CEAPS 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, CEAPS participates actively in economic policy debate concerning the public sector, both in Poland as well as abroad. In addition to their research efforts, CEAPS researchers are involved in teaching activities at the University.

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■ INSTITUTIONAL ORGANIZERS

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



**KOŁO NAUKOWE
EKONOMII
INSTYTUCJONALNEJ**

President - **Adam Pawluczyk**
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.

The Association cooperated with the Centre for Economic Analyses of 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. KNEI also participated in organizing the 1st and 2nd Polish Law & Economics Conferences. Members of KNEI pursue a research project consisting in a Law & Economics analysis of drug control regulation.

Currently the most important project is co-organizing the 3rd Polish Law & Economics Conference. In particular, members of KNEI were involved in organizing the Best Student Paper Prize competition, which resulted in selecting best students' papers regarding Law & Economics that will be presented during the conference.

Contact: <http://www.facebook.com/KNEIUW>

STUDENTS' ASSOCIATION OF LAW AND ECONOMICS AT WARSAW SCHOOL OF ECONOMICS



President - **Magdalena Weresa**
Scientific Tutor - **Dr. Jakub Karnowski**

Students' Association of Law and Economics (*Studenckie Koło Naukowe Ekonomicznej Analizy Prawa – SKN EAP*) was founded in May 2011 by a group of Law and Economics students from Warsaw School of Economics. The organization is involved in numerous social projects, aimed at promoting the field of Law and Economics. The meetings of the Association are an opportunity for students to share their Law and Economics passion and knowledge.

Currently, the most important projects of Students' Association of Law and Economics are 3rd Polish Law & Economics Conference, Summer School of Law and Economics and organization of a series of seminars.

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■ ABSTRACTS

THE DETERRENCE EFFECTS OF GUN LAWS IN GAMES WITH ASYMMETRIC SKILLS AND INFORMATION

Cristiano Aguiar de Oliveira¹, FURG and UFRGS and Giacomino Balbinotto Neto², UFRGS/PPGE

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This paper presents a game theoretic model of crime and self-defense with gun use. The main purpose is to evaluate gun control policy effectiveness on crime reduction. The effects of agent's information assumption and some extensions such as criminals' first move advantage and different costs and skills on gun carry are studied. The results show that policies that increase the availability of guns take criminals to always carry guns even if they have fight advantage over the victims. The main conclusions are that gun control implies on a decrease of gun crimes and that such policies are more effective when affects both criminals and victims costs.

AVOIDING WASTE IN EUROPEAN PRODUCT REGULATION: THE NEXUS OF EX ANTE SAFETY AND EX POST LIABILITY

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Product regulation, a pillar of European law, falls within two legal regimes: product safety, part of the consumer protection regime, and product liability, part of the internal market regime. These two legal regimes share the same goal: minimizing product risks and hence product-related accidents.

Despite working in the same direction and being applied to the same products, these two regimes are essentially different and respond to distinct concepts of how to minimize product risks and create incentives to invest in care while providing compensation to injured victims. The theoretical relationship between ex ante product safety and ex post product liability has been broadly discussed in the literature but there has not yet been an analysis of the practical interaction between the two within an integrated consumer protection regime like Europe's.

This paper aims to fill the gap. It analyzes the interaction between product safety regulation and product liability in Europe, discussing the role, scope and lack of coordination mechanisms between the two that might result in waste in terms of over-deterrence and over investment in care and argues that product regulation overall should be reevaluated in order to refine the role of each regime. It suggests that parameters such as product risk information should be taken into account when determining whether ex ante product safety regulation and ex post product liability should be jointly employed, and in structuring the interactions of these laws through a compliance defense.

THE IMPACT OF PRESUMED CONSENT LAW ON ORGAN DONATION: AN EMPIRICAL ANALYSIS FROM QUANTILE REGRESSION FOR LONGITUDINAL DATA

Giacomino Balbinotto Neto¹, UFRGS/PPGE, Everton Nunes da Silva, UFRGS/PPGE, Ministério da Saúde, Brazil and Ana Katarina Campelo, UFPE/PIMES

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Human organs for transplantation are extremely valuable goods and their shortage is a problem that has been verified in most countries around the world, generating a long waiting list for organ transplants. This is one of the most pressing health policy issues for governments. To deal with this problem, some researchers have suggested a change in organ donation law, from informed consent to presumed consent. However, few empirical works have been done to measure the relationship between presumed consent and the number of organ donations. The aim of this paper is to estimate that impact, using a new method proposed by Koenker (2004): quantile regression for longitudinal data, for a panel of 34 countries in the period 1998-2002. The results suggest that presumed consent has a positive effect on organ donation, which varies in the interval 21-26% for the quartiles {0.25; 0.5; 0.75}, the impact being stronger in the left tail of the distribution. Health expenditure has an important role on the response variable as well, the coefficient estimate varying between 42-52%.



■ ABSTRACTS

NOTE ON OPTIMUM LABOUR MARKET REGULATION IN DEVELOPING COUNTRIES: A LAW AND ECONOMICS PERSPECTIVE

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In the history of labour economics, the regulation of labour market has been debated since its inception. Many scholars argued for desirability of regulation and its implication on economic and labour market outcomes. Thus, myriad labour laws, meant to protect labourers, may have actually hurt them. This paper attempt to construct plausible theoretical model, using India as the backdrop of stylized facts, to show that this may indeed be the case. In stylised facts, we have adopted a framework developed by Averch and Johnson (1962) of regulatory constraints in monopoly markets. Our result suggests that, if the level of regulatory constraint imposed by the state on a particular industry is greater than the cost associated with labour input from formal sector but is less than without any regulatory constraints, then industry would start substitution of a labour from formal sector with informal sector and operate it at the output where cost is minimised with low price input (labour from informal sector). Because, higher amount of regulation on labour market provides an incentive to the industry to substitute a labour from formal sector to informal sector.

RURAL POLICY AND POLITICAL ACCOUNTABILITY: LOOKING AT THE PILOT PROGRAMME LEADER+ IN POLAND

Jan Falkowski, University of Warsaw and CEAPS
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The 'LEADER community initiatives' and the 'LEADER approach' have been commonly accepted as an innovative way for development of rural areas in the European Union. Yet, little is known about factors determining the adoption of this approach. This paper focuses on the role of institutional factors that are thought to affect political accountability. Using data from the early stage of LEADER implementation in Poland, it is shown that the programme was adopted in municipalities with majoritarian elections and electoral districts of smaller size. This is consistent with political economy literature arguing that policy innovations are more likely to occur in an environment where holding politicians to account is easier. This suggests that efforts to encourage 'bottom-up' rural development projects cannot ignore incentives of the local officials who may oppose initiatives that can threaten their rents to holding political office.

DEVELOPMENT OF CROWDFUNDING IN POLAND FROM THE PERSPECTIVES OF LAW AND ECONOMICS

Patryk Galuszka¹, University of Łódź and Victor Bystrov², University of Łódź
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The paper presents the phenomenon of crowdfunding - one of the newest proposals in the field of financing of production of cultural works. Crowdfunding can be defined as "an open call, mostly through the Internet, for the provision of financial resources either in form of donation, or in exchange for some form of reward and/or voting rights" (Belleflamme et al., 2011, p. 7-8). While being quite revolutionary alternative to traditional publishers, record labels and other cultural producers, crowdfunding poses several interesting questions which can be answered from the perspectives of law and economics.

Taking economic justification of intellectual property law as a starting point of the analysis, this paper attempts to show potential advantages and drawbacks of crowdfunding. Since crowdfunding shifts risk of financing production of cultural goods from publisher to consumer, attention is paid to identify possible consequences of these changes. Theoretical analysis is illustrated with empirical data gathered during research on the Polish crowdfunding service – MegaTotal.pl. Apart from that the paper analyses Polish legislation which slows down the development of crowdfunding platforms in Poland.

REGULATORY CAUSES OF CORRUPTION

Łukasz Goczek, University of Warsaw
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To aim of the article is to explain some of the empirical regularities found in the literature on corruption. It is shown that: (i) democratic countries are less corrupt (ii) higher administration efficiency and a lower number of regulations entail a lower level of corruption and (iii) countries at higher level of development are less corrupt. These hypotheses are then tested and confirmed true in the data using pooled WLS regression for 117 countries over five years (2003-2007). From a policy standpoint, based on these conclusions, policy-makers could direct more attention not only to corruption per se, but also to the regulatory environment. These results underscore the need for corrupt countries to undertake appropriate reform measures such as curtailing regulation, speeding up of administrative decisions, that would strengthen their bureaucracies and thereby reduce the level of corruption and its potentially destructive effects on their economic growth and development.

FISCAL LEGAL FRAMEWORK IN SWITZERLAND: LESSONS FOR POLAND

Jarosław Kantorowicz, University of Hamburg, European Doctorate in Law & Economics
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This essay looks at fiscal legal frameworks from the law and economics perspective with a special focus on Switzerland. It documents the fiscal performance of Switzerland during the last 20 years. After the soaring debt ratio in 1990s, Switzerland was able to reduce significantly its indebtedness in the last decade. This is in contrast to the majority of OECD countries. Improvement of fiscal stance in Switzerland was due to the successful operation of a fiscal rule called debt brake. The rule was enshrined in the Swiss Federal Constitution after its approval in a referendum in 2001. This guaranteed the rule's prestige and ensured credibility. The debt brake à la Swiss explicitly determines the expenditure according to revenue adjusted for economic conditions. It further implies the nominal debt to be stable and debt ratio to decrease over time. Recently Swiss fiscal rule has gained international recognition.

Germany used it as a benchmark for fiscal framework reform in 2010. Since the current fiscal institutions in Poland are not able to promote satisfactory budget performance (i.e. the general government deficit in Poland reached 7.8% of GDP – the highest level since 1991), the introduction of the Swiss rule with its institutional specifications should be considered also in Poland.

CRIMINAL IDENTITIES: A BEHAVIORAL ECONOMIC ANALYSIS OF TERRORISM

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The narrow understanding of Becker's (1968) model of crime predicts a negative relationship between crime and punishment. We argue that this may be conceptually flawed in cases of expressive crime, where attitudes are communicated. Expressive crime is motivated independently from material interests and provides delinquents with identity, which is partly shared within social groups. Tackling expressive crime with higher penalties might trigger perverse effects because the group may retaliate against the legislator for what the group's members perceive as illegitimate policies. In this paper, we present a formalization of expressive crime taking account of identity and apply our findings to international terrorism.

We find that higher penalties might sometimes increase social costs. This strongly suggests other measures than penalties with an educative and integrative character to address expressive criminal behavior.



■ ABSTRACTS

NATIONAL JUDGE'S INCENTIVES (NOT) TO SEEK A PRELIMINARY RULING FROM THE COURT OF JUSTICE OF THE EU IN THE CONTEXT OF NATIONAL AND EU CONSTITUTIONAL FRAMEWORK

Przemysław Mikłaszewicz, Court of Justice of the European Union, Polish Association of Law and Economics
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The paper offers insight into the role of national and EU constitutional arrangements in shaping and promoting the incentives for a national judge to refer a question for a preliminary ruling of the Court of Justice of the EU (ECJ) or to abstain from such referral. The constitutional arrangements or framework discussed are a set of formal rules which define (a) the position of a court within the national hierarchical structure of the judiciary on one hand, and with regard to the ECJ on the other hand, as well as (b) the procedural context in which a given judge operates.

These include, for example, the possibility of an appeal against their decisions and the scope of such an appeal as well as the duties incumbent upon a national judge in the context of the preliminary reference procedure. In particular, the obligation to give reasons for a refusal to seek a preliminary ruling is considered such a duty. It is assumed that the said arrangements play a major role in the decisional process a judge undertakes and which results in making or avoiding a reference to the ECJ. In this context, the strategies adopted by national judges regarding the preliminary reference procedure are discussed. More specifically, various utility functions maximized by judges are taken into account in an attempt to establish their relevance within the framework of the said procedure.

THE REUSE FOR SOCIAL AIMS OF ILLEGAL ASSETS AND THE COMPETITION POLICY. A NEW NETWORK STRATEGY TO DEFEAT ORGANIZED CRIME

Michele Mosca¹, University of Naples Federico II and Salvatore Villani², University of Naples Federico II
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The economic theory of crime considers criminal a rational individual, maximiser (that is, inclined to act to maximise his/her utility) and perfectly informed on the costs and benefits of his/her actions, or rather fully able to decide whether to assume a deviant behaviour (as stressed by sociologists, a behaviour which violates the institutionalised expectations of a given social norm; in juridical terms, a crime) rather than devoting himself/herself to a legal activity. Such abstraction involves a fundamental implication regarding the policy of prevention and fight against crime, in particular organised crime: if the choice to violate a norm is rational and sustained by a very serious evaluation of the consequent expected utility of this behaviour (and that is of its expected utility) a more rational system of penal justice is needed, to reduce its number. Nevertheless, nowadays it more often happens that the inconsistency, the complexity of the system, the length of the procedures and sometimes the lack of financial resources make it always more difficult to realise an incentive system of policies against organised crime.

The paper aims at analysing the role of reusing for social purposes of the goods confiscated from criminal organisations, instituted in Italy by the Law n. 109, 7/03/1996 (Dispositions for the management and destination of seized and confiscated goods). This paper - using a theoretical model based on the insights of the Social Network Analysis and Theory of Evolving Networks - intends to show that the seizure and the confiscation of the illegal acquired assets, and suitable policies aimed at promoting and supporting the development of Social Enterprises and other non-profit organizations, which assume an important role in the labor market, can have a direct impact on the individuals' choices, reducing the incentive for illegal activity.

EUROPEAN COURT OF JUSTICE VS. ARBITRAL TRIBUNALS: THE ROLE OF PRELIMINARY RULING WHEN EUROPEAN "PUBLIC POLICY" IS AT STAKE

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This paper considers, in a law and economics perspective, the effect of the interpretation given by the European Court of Justice of Article 267 TFEU (Treaty on the Functioning of the European Union) in private arbitration proceedings. The European Court of Justice's interpretation denies arbitral tribunals authority to refer for its preliminary ruling on the application of European Union Law. This implies that arbitrators have no power to prevent a national court of a Member State from setting the arbitral decision aside when it is requested recognition or enforcement of an arbitral award that involves European "public policy" rules (for instance when Competition Law is at stake). However, it is in the interest of efficient arbitration proceedings that any review of an arbitral award should be limited in scope and that annulment of or refusal to recognize an award should be possible only in exceptional circumstances. Conversely, the ultimate effect of the European Court of Justice's interpretation of article 267 TFEU risks to impair the very essence of arbitration.

Our purpose, here, is to test the efficiency of such interpretation on parties incentives, adapting the existing law and economics models on litigation (i.e. Priest-Klein's model on the selection of disputes for litigation and Dari Mattiacci-Parisi's model on dissipation of value and lost treasure in rent-seeking games, the latter inspired by Gordon Tullock's paradox). Our result provides an analytical argument for reviewing the current European Court of Justice's interpretation of article 267 TFEU. The intent is to increase legal certainty as well as procedural simplification and to enhance arbitration effectiveness.

Moreover it sets a building block for further studies on policy choices over a whole set of legal problems caused by the application of "public policy" rules in Alternative Dispute Resolution.

CORRUPTION AND EFFORT AMONG POLITICAL AGENTS: ANALYSING INCENTIVES AND EVIDENCE FROM THE UK AND ITALY

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This paper provides an economic analysis of the effects of immunity laws on the behaviour of politicians. To do so, it formulates a model of the principal-agent relationship between voters and their representatives which notes links between the scope for corruption and the effort exerted by politicians in pursuance of outcomes demanded by voters. Inferences will be drawn from the outcomes produced by the model, and they will be used to help explain case studies of corruption in Italy and the UK.

Overall, the paper takes up the challenge of investigating the principal-agent problems of low effort and corruption together, allowing a better understanding of the behaviour of politicians than is possible when examining the two separately. This facilitates a more accurate analysis of how this political principal-agent problem manifests itself under varying legal conditions.



■ BEST STUDENT PAPER PRIZE

The following papers have been selected for awards in the **Best Student Paper Prize** competition accompanying 3rd Polish Law & Economics Conference:

1ST PRIZE:

Kamil Joński (Warsaw School of Economics)

“Does Quick Mean Better? Measuring the Deterrent Effect of the ‘24 Hour Courts’”

2ND PRIZE:

Iwo Małobęcki (University of Warsaw)

“Per se Approach v. Rule of Reason. Tying and Bundling in European Competition Law – a Legal and Economic Analysis”

2ND PRIZE:

Jakub Michalik (Jagiellonian University)

“Can Resolution of the Clash Between Freedom of Speech and Personal Interests Be Economically Efficient? Article 22 of the Draft of the New Polish Civil Code in an Economic Perspective”

Additionally, a **distinction** has been awarded to:

Ruifeng Song (European Master in Law and Economics)

“Evaluating Correctly the Benefits, Costs and Effects of States’ Ratification of International Human Rights Treaties”

Congratulations!

■ 1ST PRIZE

Kamil Joński (Warsaw School of Economics)

DOES QUICK MEAN BETTER? MEASURING THE DETERRENT EFFECT OF THE ‘24 HOUR COURTS’

The paper contains an attempt of an econometric evaluation of the so-called 24 hour courts’ deterrent effect. ‘24 hour courts’ is the popular name for an accelerated procedure introduced into Polish Code of Criminal Procedure in 2007. The main goals of this amendment were to increase criminal courts’ efficiency and to create deterrent incentives for hooligans.

The method applied in the paper is based on the number of road accidents caused by intoxicated drivers (which turn out to be the majority of the ‘24 hour courts’ caseload) and it seems to provide strong and robust evidence of such effect (even after controlling for number of Police road checks). However the results indicate that exiting assessments of this effect were seriously overestimated.

■ 2ND PRIZE

Iwo Małobęcki (University of Warsaw)

PER SE APPROACH V. RULE OF REASON. TYING AND BUNDLING IN EUROPEAN COMPETITION LAW – A LEGAL AND ECONOMIC ANALYSIS

The main aim of this article is to conduct a transparent analysis of the economics of tying and bundling, as well as an assessment of the relevant cases and laws applicable to these types of practices in the European Union. To achieve this, the article will first and foremost provide a coherent discussion in relation the economic view of tying and bundling. Special attention will be given to the efficiency and strategic reasons of engaging in these types of economic activity. Following that, the subject of the article will shift towards a deliberation how the economically justified approach to tying and bundling is in fact implemented in practice.

Eventually, the author of this paper will try to determine which of clashing competition theories applies in European Law to practices presented in this article - is it a per se illegality approach or perhaps the rule of reason? This will not only be done by way of a simple repetition of facts but also by an engagement into the potential solutions that have been identified while investigating the issues at hand.

The results of the research indicate that although it is widely accepted that tying and bundling are both capable of having pro-competitive and anti-competitive effects, when such practices are used by dominant undertakings, serious competition concerns arise.

■ 2ND PRIZE

Jakub Michalik (Jagiellonian University)

CAN RESOLUTION OF THE CLASH BETWEEN FREEDOM OF SPEECH AND PERSONAL INTERESTS BE ECONOMICALLY EFFICIENT? ARTICLE 22 OF THE DRAFT OF THE NEW POLISH CIVIL CODE IN AN ECONOMIC PERSPECTIVE

Exercise of freedom of speech and protection of one's reputation are considered as inevitable in a democratic society. Existence of the former one is necessary for the functioning of democracy and the latter one stems directly from the recognition of the individual's inborn dignity as a crucial idea that defines his or her position in the society. Inherent conflict between these values prevents deeming any of them absolute. Since it cannot be fairly settled in abstracto, it is a lawmakers' role to provide courts with proper mechanisms that allow them solving it under specific circumstances. Such mechanism is embodied in art. 22 of the draft of the new Polish Civil Code, which concerns protection of one's reputation as an acknowledged personal right.

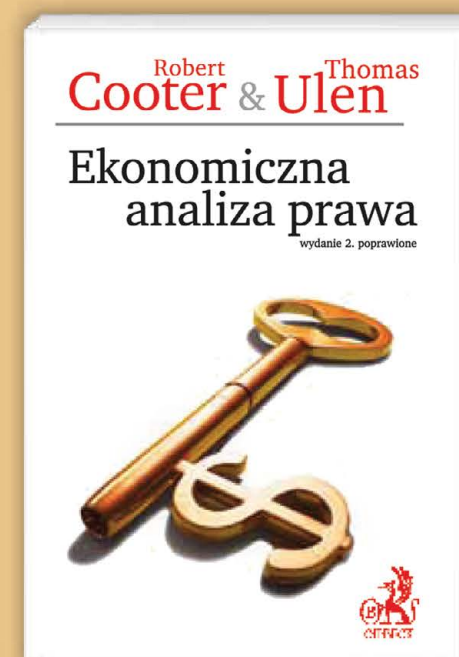
The article is an analysis of this regulation in an economic perspective. First, the proposed provision is presented in the light of the standard of protection of freedom of speech elaborated in decisions of the European Court of Human Rights to depict more completely described conflict. Second, it attempts to find an economic rationale for protection of freedom of speech are undertaken to present its coherent economic theory. Then, the pertinent regulation is scrutinized with use of economic means to evaluate whether it is economically efficient.

This final analysis concerns two aspects of the proposed provision: an amount of social loss from the suppression of free speech due to protection of individual's reputation and minimization of social costs of reporting of false factual statements. Since only the latter one may be considered as a step in the right direction, in conclusion some remedies for weaknesses of analyzed regulation are provided to increase its economic efficiency.



Robert Cooter & Thomas Ulen

Ekonomiczna analiza prawa



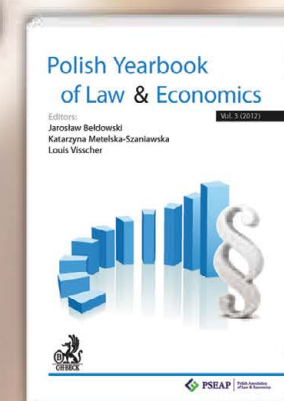
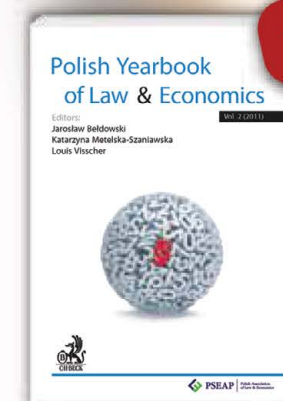
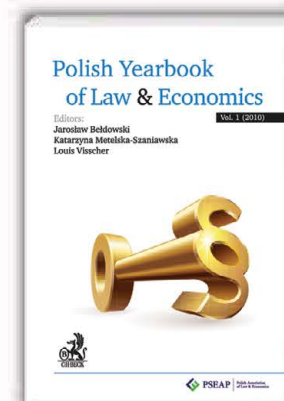
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Podręcznik polecany przez Polskie Stowarzyszenie Ekonomicznej Analizy Prawa

- 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. Od roku 1988 doczekał się on pięciu wydań po angielsku i przekładu na kilka języków. Pierwsze trzy rozdziały książki zawierają przegląd niezbędnej wiedzy z zakresu ekonomii oraz podstaw prawa szczególnie przydatne dla Czytelnika mającego inne wykształcenie. Następnie autorzy przedstawiają w dziewięciu rozdziałach podejście z perspektywy ekonomicznej do następujących dziedzin prawa: 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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