

posner economic analysis of law

Posner's Economic Analysis of Law: A Comprehensive Guide

Introduction:

Are you intrigued by the intersection of law and economics? Do you want to understand how economic principles can illuminate legal decisions and predict legal outcomes? Then you've come to the right place. This comprehensive guide delves into Richard Posner's groundbreaking work on the economic analysis of law, exploring its core tenets, criticisms, and enduring influence. We'll unpack the key concepts, examine its application in various legal fields, and address common misconceptions. Prepare to gain a robust understanding of one of the most significant contributions to legal theory in the last half-century.

What is Economic Analysis of Law?

Before diving into Posner's specific contributions, it's crucial to define the field itself. Economic analysis of law (EAL) applies economic theories and methods to analyze legal rules and institutions. It posits that legal decisions, like economic choices, are driven by individuals' rational pursuit of self-interest, and it seeks to predict how individuals will respond to different legal rules. This prediction is often framed using cost-benefit analysis. EAL isn't about replacing legal reasoning but rather supplementing it with a powerful analytical framework.

Posner's Key Contributions to Economic Analysis of Law:

Richard Posner, a highly influential jurist and legal scholar, is widely considered the father of the modern economic analysis of law. His prolific writings, particularly his seminal work "Economic Analysis of Law," have fundamentally shaped the field. His key contributions include:

1. The Efficiency Hypothesis: Posner's work prominently features the "efficiency hypothesis," which suggests that the common law – the body of judge-made law developed over centuries – tends to be efficient. This doesn't mean perfect efficiency, but rather that it generally maximizes societal wealth by minimizing transaction costs and aligning incentives. He argued that judges, even subconsciously, tend to make decisions that promote efficient outcomes, though this hypothesis has been a source of considerable debate.
1. Wealth Maximization as a Normative Goal: While not universally accepted, Posner often uses wealth maximization as a normative goal for evaluating legal rules. This means assessing whether a legal rule leads to the greatest possible increase in aggregate wealth for society. This approach has drawn criticism for ignoring issues of fairness and distribution.

1. Application Across Legal Fields: Posner demonstrated the versatility of EAL by applying its principles to a vast range of legal areas, including contract law, tort law, property law, criminal law, and antitrust law. His analyses showcase how economic models can illuminate the rationale behind legal doctrines and predict the impact of legal changes.

1. Emphasis on Empirical Evidence: Posner emphasized the importance of grounding EAL in empirical data. He advocated for using statistical analysis and other empirical methods to test the predictions of economic models and refine our understanding of how legal rules actually function in the real world.

Criticisms of Posner's Economic Analysis of Law:

Despite its significant influence, Posner's work has faced substantial criticism. Key objections include:

The Assumption of Rationality: Critics argue that the assumption of perfect rationality underlying many EAL models is unrealistic. Individuals often act irrationally, driven by emotions, biases, and imperfect information.

Ignoring Distributional Concerns: The focus on wealth maximization can overshadow concerns about fairness and equitable distribution of resources. A rule might be efficient in aggregate but still lead to unacceptable inequalities.

The Problem of Measurement: Quantifying the costs and benefits of legal rules can be extremely challenging, making empirical testing difficult and potentially unreliable.

Oversimplification of Complex Issues: Critics argue that reducing complex legal issues to simple economic models can oversimplify the problem and ignore crucial non-economic factors.

The "Is-Ought" Problem: Some argue that deriving normative conclusions (what ought to be) from descriptive observations (what is) is a logical fallacy. Just because the common law seems efficient doesn't necessarily mean it should be efficient.

The Enduring Influence of Posner's Work:

Despite the criticisms, Posner's work remains profoundly influential. He has significantly advanced the field of law and economics, shaping legal scholarship, judicial decision-making, and legal education. His emphasis on empirical analysis and his application of economic principles to diverse legal areas have enriched our understanding of the law's function and impact. Even those who disagree with his conclusions often engage with his arguments, reflecting the enduring impact of his scholarship.

Book Outline: "Economic Analysis of Law" by Richard Posner

Title: Economic Analysis of Law

Contents:

Introduction: Overview of economic analysis of law, its principles, and its application to various legal fields.

Chapter 1: Contract Law: Examination of contract formation, breach of contract, remedies, and the role of efficiency in contract law.

Chapter 2: Tort Law: Analysis of negligence, strict liability, and other tort doctrines through an economic lens, focusing on accident avoidance and optimal levels of precaution.

Chapter 3: Property Law: Exploration of property rights, externalities, and the economic rationale behind different property regimes.

Chapter 4: Criminal Law: Application of economic principles to criminal law, including optimal punishment levels, deterrence, and the economics of crime.

Chapter 5: Antitrust Law: Discussion of antitrust enforcement, monopolies, market power, and the economic goals of competition policy.

Chapter 6: Constitutional Law: An analysis of constitutional issues through an economic framework, examining topics such as judicial review and the protection of property rights.

Chapter 7: Other Areas of Law: A brief overview of the application of economic principles to other legal fields such as administrative law, family law, and environmental law.

Conclusion: Summary of the key themes and arguments, discussion of the limitations and future directions of economic analysis of law.

Detailed Explanation of Outline Points:

(Each chapter would necessitate a far more extensive explanation for a complete analysis, but this provides a starting point.)

Introduction: This section sets the stage, defining EAL and highlighting its core principles. It introduces Posner's central thesis and outlines the book's structure.

Chapter 1: Contract Law: This chapter explores how economic principles explain contract formation, focusing on the efficient allocation of resources and the reduction of transaction costs. It examines different types of contracts, breach of contract scenarios, and the role of remedies in achieving efficient outcomes.

Chapter 2: Tort Law: Here, Posner delves into the economic analysis of accidents, exploring the optimal level of precaution and the efficient allocation of accident costs. It discusses the difference between negligence and strict liability, analyzing their effects on incentives and resource allocation.

Chapter 3: Property Law: This section examines how property rights are defined and enforced, and how these rights affect the use and allocation of resources. It explores the role of property rights in preventing externalities and promoting efficient resource use.

Chapter 4: Criminal Law: This chapter applies economic models to understand criminal behavior, exploring topics such as deterrence, optimal punishment, and the costs and benefits of various criminal justice policies.

Chapter 5: Antitrust Law: Posner analyzes antitrust laws through the lens of promoting competition and preventing monopolies. He examines the economic effects of mergers, price fixing, and other anti-competitive practices.

Chapter 6: Constitutional Law: This chapter represents a more challenging application of EAL, exploring how economic principles can inform the interpretation and application of constitutional provisions.

Chapter 7: Other Areas of Law: This chapter provides a brief overview of how economic analysis can be applied to other areas of law, illustrating the breadth and versatility of the framework.

Conclusion: This section summarizes the key arguments and insights of the book, acknowledging limitations and highlighting potential avenues for future research in the field.

Frequently Asked Questions (FAQs):

1. What are the main criticisms of Posner's economic analysis of law? Critics argue it oversimplifies human behavior, ignores distributive justice, and struggles with accurate measurement of costs and benefits.
1. How does Posner's work differ from other approaches to legal theory? It emphasizes empirical evidence and quantitative analysis, contrasting with more purely philosophical or doctrinal approaches.
1. Is Posner's efficiency hypothesis universally accepted? No, it's a subject of ongoing debate among legal scholars.
1. What are some real-world applications of Posner's ideas? His work informs judicial decisions, legislative proposals, and regulatory policy in various areas of law.
1. How has Posner's work influenced legal education? Economic analysis of law is now a standard part of many law school curricula.
1. What are the limitations of using wealth maximization as a normative goal? It ignores fairness and distributional concerns, which many consider crucial aspects of a just legal system.
1. How does Posner's approach to contract law differ from traditional approaches? He emphasizes the role of efficiency in contract formation and enforcement, rather than solely focusing on formalistic rules.

1. What is the role of empirical evidence in Posner's economic analysis of law? He strongly advocates for using empirical data to test hypotheses and refine our understanding of legal rules' effects.
1. What are the future directions of economic analysis of law? Further integration of behavioral economics, greater emphasis on empirical research, and attention to broader social and ethical considerations are important areas for future development.

Related Articles:

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1. Economic Analysis of Criminal Law: Deterrence and Punishment: Explores the use of economic

models to analyze optimal punishment levels and deterrence.

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posner economic analysis of law: Economic Analysis of Law Richard A. Posner, 1986 This text for students of law and economics concentrates on the progress of scholarship in the field. Concrete applications are emphasized over abstract theory in the book.

posner economic analysis of law: Foundations of Economic Analysis of Law Steven Shavell, 2009-07-01 What effects do laws have? Do individuals drive more cautiously, clear ice from sidewalks more diligently, and commit fewer crimes because of the threat of legal sanctions? Do corporations pollute less, market safer products, and obey contracts to avoid suit? And given the effects of laws, which are socially best? Such questions about the influence and desirability of laws have been investigated by legal scholars and economists in a new, rigorous, and systematic manner since the 1970s. Their approach, which is called economic, is widely considered to be intellectually compelling and to have revolutionized thinking about the law. In this book Steven Shavell provides an in-depth analysis and synthesis of the economic approach to the building blocks of our legal system, namely, property law, tort law, contract law, and criminal law. He also examines the litigation process as well as welfare economics and morality. Aimed at a broad audience, this book requires neither a legal background nor technical economics or mathematics to understand it. Because of its breadth, analytical clarity, and general accessibility, it is likely to serve as a definitive work in the economic analysis of law.

posner economic analysis of law: The Economics of Justice Richard A. Posner, 1983-08-16 Posner uses economic analysis to probe justice and efficiency, primitive law, privacy, and the constitutional regulation of racial discrimination.

posner economic analysis of law: Efficiency Instead of Justice? Klaus Mathis, 2009-03-18 Economic analysis of law is an interesting and challenging attempt to employ the concepts and reasoning methods of modern economic theory so as to gain a deeper understanding of legal problems. According to Richard A. Posner it is the role of the law to encourage market competition and, where the market fails because transaction costs are too high, to simulate the result of competitive markets. This would maximize economic efficiency and social wealth. In this work, the lawyer and economist Klaus Mathis critically appraises Posner's normative justification of the efficiency paradigm from the perspective of the philosophy of law. Posner acknowledges the influences of Adam Smith and Jeremy Bentham, whom he views as the founders of normative economics. He subscribes to Smith's faith in the market as an ideal allocation model, and to Bentham's ethical consequentialism. Finally, aligning himself with John Rawls's contract theory, he seeks to legitimize his concept of wealth maximization with a consensus theory approach. In his interdisciplinary study, the author points out the possibilities as well as the limits of economic analysis of law. It provides a method of analysing the law which, while very helpful, is also rather

specific. The efficiency arguments therefore need to be incorporated into a process for resolving value conflicts. In a democracy this must take place within the political decision-making process. In this clearly written work, Klaus Mathis succeeds in making even non-economists more aware of the economic aspects of the law.

posner economic analysis of law: *Frontiers of Legal Theory* Richard A. Posner, 2004-03 The most exciting development in legal thinking since World War II has been the growth of interdisciplinary legal studies. Judge Richard Posner has been a leader in this movement, and his new book explores its rapidly expanding frontier.

posner economic analysis of law: *Tort Law* Richard A. Posner, 1982

posner economic analysis of law: *Law and Social Norms* Eric Posner, 2009-07-01 What is the role of law in a society in which order is maintained mostly through social norms, trust, and nonlegal sanctions? Eric Posner argues that social norms are sometimes desirable yet sometimes odious, and that the law is critical to enhancing good social norms and undermining bad ones. But he also argues that the proper regulation of social norms is a delicate and complex task, and that current understanding of social norms is inadequate for guiding judges and lawmakers. What is needed, and what this book offers, is a model of the relationship between law and social norms. The model shows that people's concern with establishing cooperative relationships leads them to engage in certain kinds of imitative behavior. The resulting behavioral patterns are called social norms. Posner applies the model to several areas of law that involve the regulation of social norms, including laws governing gift-giving and nonprofit organizations; family law; criminal law; laws governing speech, voting, and discrimination; and contract law. Among the engaging questions posed are: Would the legalization of gay marriage harm traditional married couples? Is it beneficial to shame criminals? Why should the law reward those who make charitable contributions? Would people vote more if non-voters were penalized? The author approaches these questions using the tools of game theory, but his arguments are simply stated and make no technical demands on the reader.

posner economic analysis of law: *The Rise of Law and Economics* George L. Priest, 2020-03-03 This is a history—though, intentionally, a brief history—of the rise of law and economics as a field of thought in the U.S. college and law school academy, though the field has expanded to Europe and South America and will expand further as other legal systems develop. This book explains the origins of the field and the sources of its growth during its formative period. It describes the intellectual roots of the field, and the field's relationship to the understanding of the role of the legal system in directing the functioning of the economy. It describes the effect of the Great Depression and the expansion of governmental power on advancing the functional approach. The book then addresses the work of Aaron Director, during the late 1950s, on focusing economic analysis as a means of understanding the effects of the legal and regulatory system on the allocation of resources in the society. Then it turns to the subsequent intellectual founders of the field—Ronald Coase, Guido Calabresi, and Richard Posner—and attempts to explain the significance of their work. It also discusses the efforts of Robert Bork and Henry Manne toward the influence of law and economics on public policy. The book ends with the founding of the American Law and Economics Association in 1991. This is an essential companion to law and economics texts for undergraduate law and economic students and, especially, a general supplement to first-year casebooks for law school students.

posner economic analysis of law: *The Future of Law and Economics* Guido Calabresi, 2016-01-28 In a concise, compelling argument, one of the founders and most influential advocates of the law and economics movement divides the subject into two separate areas, which he identifies with Jeremy Bentham and John Stuart Mill. The first, Benthamite, strain, "economic analysis of law," examines the legal system in the light of economic theory and shows how economics might render law more effective. The second strain, law and economics, gives equal status to law, and explores how the more realistic, less theoretical discipline of law can lead to improvements in economic theory. It is the latter approach that Judge Calabresi advocates, in a series of eloquent, thoughtful essays that will appeal to students and scholars alike.

posner economic analysis of law: Economic Analysis of Accident Law Steven Shavell, 2007-03-31 Accident law, if properly designed, is capable of reducing the incidence of mishaps by making people act more cautiously. Since the 1960s, a group of legal scholars and economists have focused on identifying the effects of accident law on people's behavior. Steven Shavell's book is the definitive synthesis of research to date in this new field.

posner economic analysis of law: *A Guide to Posner's Economic Analysis of Law* Alain Marciano, Sophie Harnay, 2015-03-01 The author of more than 50 books and 150 articles, Richard Posner is one of the most cited legal scholars of the 20th century. His sometimes controversial views are incredibly complex, but are unified by the use of economics to analyze law and legal phenomena. This book offers an innovative and highly original guide to Posner's economic analysis of law. Rather than using a traditional structure, this volume guides the reader through Posner's ideas via a series of key themes. Each chapter includes an original introduction written by Alain Marciano and Sophie Harnay, a reprint of a text either written by Posner or about his work, and additional bibliographical references to complete the presentation of Posner's ideas. Themes covered include 9/11, CIA, Altruism, Behavioral law and economics, Capitalism, Coase, Ronald, Common law, Crisis, Darwin, Efficiency, Judicial decision making, Justice, Law and Economics, Liberalism (conservatism), Markets, Morals (law and), Pragmatism, Precedent, Public intellectuals, Rationality, and Wealth, to name just a few. In order to provide an overview of Posner's activities since the end of the 1960s, the book will include scientific articles and book chapters, newspapers, magazines articles, interviews and blog posts. This innovative approach is taken on in order to offer a truly rounded view of Posner's work and opinions. In addition, the volume will include critical texts in order to shed light on the alleged limits of Posner's analyses and how he faced these criticisms. This guidebook will be essential reading for all those working at the intersection of law and economics.

posner economic analysis of law: Words, Objects and Events in Economics Peter Róna, László Zsolnai, Agnieszka Wincewicz-Price, 2020-09-03 This open access book examines from a variety of perspectives the disappearance of moral content and ethical judgment from the models employed in the formulation of modern economic theory, and some of the papers contain important proposals about how moral judgment could be reintroduced in economic theory. The chapters collected in this volume result from the favorable reception of the first volume of the *Virtues in Economics* series and represent further contributions to the themes set out in that volume: (i) examining the philosophical and methodological fallacies of this turn in modern economic theory that the removal of the moral motivation of economic agents from modern economic theory has entailed; and (ii) proposing a return descriptive economics as the means with which the moral content of economic life could be restored in economic theory. This book is of interest to researchers and students of the methodology of economics, ethics, philosophers concerned with agency and economists who build economic models that rest in the intention of the agent.

posner economic analysis of law: A Legal Theory Without Law Ernst-Joachim Mestmäcker, 2007 Ernst-Joachim Mestmacker reviews Richard Posner's and Friedrich A. von Hayek's legal theories. Both are famous for their contributions to law and economics. They are, however, adversaries in their concepts of law and how it is to be informed by economics. Posner finds the only scientific legal theory in the external (economic) analysis of law. With Friedrich von Hayek the role of rules of conduct and legislation is to be determined by the principles that govern a free and competitive order. There are, contrary to Posner, important contributions from legal scholarship, legal history and comparative law.

posner economic analysis of law: The Economic Structure of Corporate Law Frank H. Easterbrook, Daniel R. Fischel, 1996-02-01 The authors argue that the rules and practices of corporate law mimic contractual provisions that parties would reach if they bargained about every contingency at zero cost and flawlessly enforced their agreements. But bargaining and enforcement are costly, and corporate law provides the rules and an enforcement mechanism that govern relations among those who commit their capital to such ventures. The authors work out the reasons for supposing that this is the exclusive function of corporate law and the implications of this

perspective.

posner economic analysis of law: The Problems of Jurisprudence Richard A. Posner, 1990
In this book, Richard A. Posner examines how judges go about making difficult decisions. Posner argues that they cannot rely on either logic or science, but must fall back on a grab bag of informal methods of reasoning that owe less than one might think to legal training and experience. -- Adapted from Amazon.com summary.

posner economic analysis of law: The Economic Structure of Intellectual Property Law
William M. LANDES, Richard A. Posner, 2009-06-30 This book takes a fresh look at the most dynamic area of American law today, comprising the fields of copyright, patent, trademark, trade secrecy, publicity rights, and misappropriation. Topics range from copyright in private letters to defensive patenting of business methods, from moral rights in the visual arts to the banking of trademarks, from the impact of the court of patent appeals to the management of Mickey Mouse. The history and political science of intellectual property law, the challenge of digitization, the many statutes and judge-made doctrines, and the interplay with antitrust principles are all examined. The treatment is both positive (oriented toward understanding the law as it is) and normative (oriented to the reform of the law). Previous analyses have tended to overlook the paradox that expanding intellectual property rights can effectively reduce the amount of new intellectual property by raising the creators' input costs. Those analyses have also failed to integrate the fields of intellectual property law. They have failed as well to integrate intellectual property law with the law of physical property, overlooking the many economic and legal-doctrinal parallels. This book demonstrates the fundamental economic rationality of intellectual property law, but is sympathetic to critics who believe that in recent decades Congress and the courts have gone too far in the creation and protection of intellectual property rights. Table of Contents: Introduction 1. The Economic Theory of Property 2. How to Think about Copyright 3. A Formal Model of Copyright 4. Basic Copyright Doctrines 5. Copyright in Unpublished Works 6. Fair Use, Parody, and Burlesque 7. The Economics of Trademark Law 8. The Optimal Duration of Copyrights and Trademarks 9. The Legal Protection of Postmodern Art 10. Moral Rights and the Visual Artists Rights Act 11. The Economics of Patent Law 12. The Patent Court: A Statistical Evaluation 13. The Economics of Trade Secrecy Law 14. Antitrust and Intellectual Property 15. The Political Economy of Intellectual Property Law Conclusion Acknowledgments Index
Reviews of this book: Chicago law professor William Landes and his polymath colleague Richard Posner have produced a fascinating new book...[The Economic Structure of Intellectual Property Law] is a broad-ranging analysis of how intellectual property should and does work...Shakespeare's copying from Plutarch, Microsoft's incentives to hide the source code for Windows, and Andy Warhol's right to copyright a Brillo pad box as art are all analyzed, as is the question of the status of the all-bran cereal called 'All-Bran.' --Nicholas Thompson, New York Sun
Reviews of this book: Landes and Posner, each widely respected in the intersection of law and economics, investigate the right mix of protection and use of intellectual property (IP)...This volume provides a broad and coherent approach to the economics and law of IP. The economics is important, understandable, and valuable. --R. A. Miller, Choice
Intellectual property is the most important public policy issue that most policymakers don't yet get. It is America's most important export, and affects an increasingly wide range of social and economic life. In this extraordinary work, two of America's leading scholars in the law and economics movement test the pretensions of intellectual property law against the rationality of economics. Their conclusions will surprise advocates from both sides of this increasingly contentious debate. Their analysis will help move the debate beyond the simplistic ideas that now tend to dominate. --Lawrence Lessig, Stanford Law School, author of The Future of Ideas: The Fate of the Commons in a Connected World
An image from modern mythology depicts the day that Einstein, pondering a blackboard covered with sophisticated calculations, came to the life-defining discovery: Time = \$\$.

Landes and Posner, in the role of that mythological Einstein, reveal at every turn how perceptions of economic efficiency pervade legal doctrine. This is a fascinating and resourceful book. Every page reveals fresh, provocative, and surprising insights into the forces that shape law. --Pierre N. Leval,

Judge, U.S. Court of Appeals, Second Circuit The most important book ever written on intellectual property. --William Patry, former copyright counsel to the U.S. House of Representatives, Judiciary Committee Given the immense and growing importance of intellectual property to modern economies, this book should be welcomed, even devoured, by readers who want to understand how the legal system affects the development, protection, use, and profitability of this peculiar form of property. The book is the first to view the whole landscape of the law of intellectual property from a functionalist (economic) perspective. Its examination of the principles and doctrines of patent law, copyright law, trade secret law, and trademark law is unique in scope, highly accessible, and altogether greatly rewarding. --Steven Shavell, Harvard Law School, author of *Foundations of Economic Analysis of Law*

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posner economic analysis of law: How Judges Think Richard A. Posner, 2010-05-01 A distinguished and experienced appellate court judge, Richard A. Posner offers in this new book a unique and, to orthodox legal thinkers, a startling perspective on how judges and justices decide cases. When conventional legal materials enable judges to ascertain the true facts of a case and apply clear pre-existing legal rules to them, Posner argues, they do so straightforwardly; that is the domain of legalist reasoning. However, in non-routine cases, the conventional materials run out and judges are on their own, navigating uncharted seas with equipment consisting of experience, emotions, and often unconscious beliefs. In doing so, they take on a legislative role, though one that is confined by internal and external constraints, such as professional ethics, opinions of respected colleagues, and limitations imposed by other branches of government on freewheeling judicial discretion. Occasional legislators, judges are motivated by political considerations in a broad and sometimes a narrow sense of that term. In that open area, most American judges are legal pragmatists. Legal pragmatism is forward-looking and policy-based. It focuses on the consequences of a decision in both the short and the long term, rather than on its antecedent logic. Legal pragmatism so understood is really just a form of ordinary practical reasoning, rather than some special kind of legal reasoning. Supreme Court justices are uniquely free from the constraints on ordinary judges and uniquely tempted to engage in legislative forms of adjudication. More than any other court, the Supreme Court is best understood as a political court.

posner economic analysis of law: Antitrust Law Richard A. Posner, 1976 'A creative, informative, and highly readable narrative... The book consists of four sections dealing in turn with (1) the law and economics of antitrust policy; (2) the problem of collusion; (3) the question of exclusionary practices; and (4) the difficulties of enforcement... This is a provocative work that judiciously raises pertinent questions about our antitrust policy.'-Robert J. Steamer, *Perspective*

posner economic analysis of law: An Affair of State Richard A. Posner, 2009-07-01 President Bill Clinton's year of crisis, which began when his affair with Monica Lewinsky hit the front pages in January 1998, engendered a host of important questions of criminal and constitutional law, public and private morality, and political and cultural conflict. In a book written while the events of the year were unfolding, Richard Posner presents a balanced and scholarly understanding of the crisis that also has the freshness and immediacy of journalism. Posner clarifies the issues and eliminates misunderstandings concerning facts and the law that were relevant to the investigation by Independent Counsel Kenneth Starr and to the impeachment proceeding itself. He explains the legal definitions of obstruction of justice and perjury, which even many lawyers are unfamiliar with. He carefully assesses the conduct of Starr and his prosecutors, including their contacts with the lawyers for Paula Jones and their hardball tactics with Monica Lewinsky and her mother. He compares and contrasts the Clinton affair with Watergate, Iran-Contra, and the impeachment of Andrew Johnson, exploring the subtle relationship between public and private morality. And he examines the place of

impeachment in the American constitutional scheme, the pros and cons of impeaching President Clinton, and the major procedural issues raised by both the impeachment in the House and the trial in the Senate. This book, reflecting the breadth of Posner's experience and expertise, will be the essential foundation for anyone who wants to understand President Clinton's impeachment ordeal.

posner economic analysis of law: The Problematics of Moral and Legal Theory Richard A. Posner, 2009-06-01 Ambitious legal thinkers have become mesmerized by moral philosophy, believing that great figures in the philosophical tradition hold the keys to understanding and improving law and justice and even to resolving the most contentious issues of constitutional law. They are wrong, contends Richard Posner in this book. Posner characterizes the current preoccupation with moral and constitutional theory as the latest form of legal mystification--an evasion of the real need of American law, which is for a greater understanding of the social, economic, and political facts out of which great legal controversies arise. In pursuit of that understanding, Posner advocates a rebuilding of the law on the pragmatic basis of open-minded and systematic empirical inquiry and the rejection of cant and nostalgia--the true professionalism foreseen by Oliver Wendell Holmes a century ago. A bracing book that pulls no punches and leaves no pieties unpunctured or sacred cows unkicked, *The Problematics of Moral and Legal Theory* offers a sweeping tour of the current scene in legal studies--and a hopeful prospect for its future.

posner economic analysis of law: The Economic Approach to Law, Second Edition, 2009 Designed specifically for economics students, *The Economic Approach to Law*, 2nd Edition, provides an introductory treatment of law and economics, revealing how economic principles explain the structure of the law, and how they can help make the law more efficient. To that end, the author focuses on unifying themes in the field--rather than exhaustively covering legal topics--and thus provides a more analytical treatment of the subject. The second edition includes current research into the economics of common law areas, such as torts, contracts, and property law. The revised text also offers a new chapter that explores how economics can be applied to anti-trust law, as well as added material on intellectual property. This edition features an expanded suite of exercises and problems at the end of each chapter to encourage students to do law and economics. A companion web site offers a full suite of resources for students and professors. Key pedagogical features include cases; discussion points that provide additional analysis of topics in the book; graduate notes, which deepen the text for more advanced readers; and relevant Web links. Professors have access to sample syllabi for undergraduate and graduate courses and to an instructor's manual providing suggested answers to all of the end-of-chapter questions/problems in the book.

posner economic analysis of law: Cost-benefit Analysis Matthew D. Adler, 2001-01-01 Cost-benefit analysis is a widely used governmental evaluation tool, though academics remain skeptical. This volume gathers prominent contributors from law, economics, and philosophy for discussion of cost-benefit analysis, specifically its moral foundations, applications and limitations. This new scholarly debate includes not only economists, but also contributors from philosophy, cognitive psychology, legal studies, and public policy who can further illuminate the justification and moral implications of this method and specify alternative measures. These articles originally appeared in the *Journal of Legal Studies*. Contributors: - Matthew D. Adler - Gary S. Becker - John Broome - Robert H. Frank - Robert W. Hahn - Lewis A. Kornhauser - Martha C. Nussbaum - Eric A. Posner - Richard A. Posner - Henry S. Richardson - Amartya Sen - Cass R. Sunstein - W. Kip Viscusi

posner economic analysis of law: Overcoming Law Richard A. Posner, 1995 Legal theory must become more factual and empirical and less conceptual and polemical, Richard Posner argues in this wide-ranging new book. The topics covered include the structure and behavior of the legal profession; constitutional theory; gender, sex, and race theories; interdisciplinary approaches to law; the nature of legal reasoning; and legal pragmatism. Posner analyzes, in witty and passionate prose, schools of thought as different as social constructionism and institutional economics, and scholars and judges as different as Bruce Ackerman, Robert Bork, Ronald Dworkin, Catharine MacKinnon, Richard Rorty, and Patricia Williams. He also engages challenging issues in legal theory that range from the motivations and behavior of judges and the role of rhetoric and analogy in law to the

rationale for privacy and blackmail law and the regulation of employment contracts. Although written by a sitting judge, the book does not avoid controversy; it contains frank appraisals of radical feminist and race theories, the behavior of the German and British judiciaries in wartime, and the excesses of social constructionist theories of sexual behavior. Throughout, the book is unified by Posner's distinctive stance, which is pragmatist in philosophy, economic in methodology, and liberal (in the sense of John Stuart Mill's liberalism) in politics. Brilliantly written, eschewing jargon and technicalities, it will make a major contribution to the debate about the role of law in our society.

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provide economic infrastructure, control public “bad” type externalities, and make legislation. Game theory provides the bridge between competitive markets and the missing discussion of cooperative action in law and economics. How? Competitive markets are examples (subset) of the Prisoners’ Dilemma, which explains the conflict between individual self-interested behavior and cooperation both in economic markets and in legislative bodies and demonstrates the need for social infrastructure and regulation of pollution and global warming. Game Theory and Law: Lawsuits usually involve litigation between two parties, not the myriad participants in markets, so the assumption of self-interest constrained by markets does not carry over to legal disputes involving one-on-one bargaining in which the law gives one party superior bargaining power. Game theory models predict the effect of different legal institutions, rights, and rules on the outcome of such bargaining. Game theory also has a natural four-model framework which is used in this book to analyze the law and economics of civil obligation, which consists of torts (negligence), contracts, and unjust enrichment.

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posner economic analysis of law: A Failure of Capitalism Richard A. Posner, 2011-05-31 The financial and economic crisis that began in 2008 is the most alarming of our lifetime because of the warp-speed at which it is occurring. How could it have happened, especially after all that we've

learned from the Great Depression? Why wasn't it anticipated so that remedial steps could be taken to avoid or mitigate it? What can be done to reverse a slide into a full-blown depression? Why have the responses to date of the government and the economics profession been so lackluster? Richard Posner presents a concise and non-technical examination of this mother of all financial disasters and of the, as yet, stumbling efforts to cope with it. No previous acquaintance on the part of the reader with macroeconomics or the theory of finance is presupposed. This is a book for intelligent generalists that will interest specialists as well. Among the facts and causes Posner identifies are: excess savings flowing in from Asia and the reckless lowering of interest rates by the Federal Reserve Board; the relation between executive compensation, short-term profit goals, and risky lending; the housing bubble fuelled by low interest rates, aggressive mortgage marketing, and loose regulations; the low savings rate of American people; and the highly leveraged balance sheets of large financial institutions. Posner analyzes the two basic remedial approaches to the crisis, which correspond to the two theories of the cause of the Great Depression: the monetarist--that the Federal Reserve Board allowed the money supply to shrink, thus failing to prevent a disastrous deflation--and the Keynesian--that the depression was the product of a credit binge in the 1920's, a stock-market crash, and the ensuing downward spiral in economic activity. Posner concludes that the pendulum swung too far and that our financial markets need to be more heavily regulated. Read Richard Posner's blog, and his latest article in The Atlantic.

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