richard posner economic analysis of law

Richard Posner's Economic Analysis of Law: A Comprehensive Guide

Introduction:

Have you ever wondered how economic principles can illuminate legal decisions? Judge Richard Posner, a towering figure in legal scholarship, has dedicated his career to exploring this very intersection. His groundbreaking work on the economic analysis of law has fundamentally reshaped legal thinking, offering a powerful framework for understanding and predicting judicial outcomes. This comprehensive guide delves into Posner's contributions, exploring his key arguments, criticisms, and enduring legacy. We'll unpack his core tenets, examine real-world applications, and address common misconceptions surrounding this influential approach. Prepare to gain a deeper understanding of how economics shapes the law, and how Posner's work continues to spark debate and innovation.

I. The Core Tenets of Posner's Economic Analysis of Law:

Posner's economic analysis of law isn't simply about applying economic models to legal issues; it's a sophisticated framework that views law through the lens of efficiency and rational choice. At its heart lies the principle of wealth maximization. Posner argues that the common law, over time, tends to evolve towards rules that maximize the wealth of society. This isn't necessarily about maximizing monetary wealth alone; it encompasses a broader concept of societal well-being, measured by the satisfaction of individual preferences.

This efficiency-driven approach involves several key components:

Rational Choice Theory: Posner assumes that individuals, whether they're litigants, judges, or lawmakers, act rationally to maximize their own self-interest. This assumption, while often debated, provides a powerful tool for predicting behavior and evaluating the effectiveness of legal rules.

Transaction Costs: The efficiency of a legal rule is heavily influenced by transaction costs—the costs associated with negotiating, enforcing, and monitoring agreements. Posner emphasizes that high transaction costs can lead to inefficient outcomes, even if a theoretically efficient solution exists. For example, lengthy and costly litigation can prevent parties from reaching mutually beneficial agreements.

Predictability and Certainty: Posner highlights the importance of clear and predictable legal rules. Uncertainty creates risk and discourages efficient behavior. Clear rules, even if imperfect, minimize uncertainty and allow individuals to plan their actions accordingly.

Coase Theorem: This theorem, central to Posner's work, states that if property rights are well-defined and transaction costs are low, efficient outcomes will result regardless of the initial allocation of those rights. This means that bargaining between parties can lead to efficient solutions, even without government intervention.

II. Applications of Posner's Economic Analysis of Law:

Posner's framework has been applied across a broad spectrum of legal areas, including:

Contract Law: Economic analysis sheds light on the optimal level of enforcement of contracts, the role of remedies like damages and specific performance, and the efficient allocation of risk.

Tort Law: The economic analysis of tort law focuses on the optimal level of precaution, the appropriate standard of care, and the efficient allocation of liability for accidents. It analyzes the trade-off between accident prevention costs and the costs of accidents themselves.

Criminal Law: Posner applies economic principles to understand optimal punishment levels, deterrence, and the cost-benefit analysis of crime prevention strategies.

Property Law: Economic analysis illuminates the efficient allocation of property rights, the optimal use of resources, and the role of property rights in incentivizing efficient behavior.

Antitrust Law: Posner's work has significantly influenced the understanding of antitrust violations, particularly in the context of monopolies and mergers. He emphasizes the promotion of competition and the prevention of anti-competitive behavior that harms consumer welfare.

III. Criticisms and Limitations of Posner's Approach:

Despite its influence, Posner's economic analysis of law has faced significant criticisms:

Oversimplification: Critics argue that Posner's reliance on rational choice theory and wealth maximization oversimplifies human behavior and ignores factors like altruism, fairness, and moral considerations.

Empirical Challenges: While Posner's framework offers valuable insights, its empirical basis is sometimes debated. The extent to which common law truly maximizes wealth is difficult to definitively measure.

Distributional Concerns: Focusing solely on efficiency can lead to ignoring distributional concerns. Efficient outcomes might still leave some groups disproportionately disadvantaged.

Transaction Cost Assumptions: The Coase Theorem's reliance on low transaction costs is often unrealistic in many real-world legal situations. High transaction costs frequently prevent efficient bargaining.

IV. Posner's Enduring Legacy:

Despite these criticisms, Richard Posner's economic analysis of law remains incredibly influential. He has helped to bridge the gap between legal and economic scholarship, prompting legal scholars to incorporate economic thinking into their analysis and sparking significant advancements in legal theory and practice. His work continues to shape legal education and inspire ongoing debate and research.

V. A Sample Book Outline: "Economic Analysis of Law" by Richard Posner

This is a simplified outline, as Posner's book is quite extensive.

Introduction: Introducing the economic approach to law, outlining its core tenets and methodology.

Chapter 1: The Efficiency of the Common Law: Examining the evolutionary process of the common law and its tendency towards efficiency.

Chapter 2: Contract Law: Analyzing the economic underpinnings of contract formation, breach, and remedies.

Chapter 3: Tort Law: Exploring economic models of negligence, strict liability, and the optimal level of precaution.

Chapter 4: Criminal Law: Applying economic principles to understand crime, punishment, and deterrence.

Chapter 5: Property Law: Analyzing the economic implications of property rights, land use, and resource allocation.

Chapter 6: Antitrust Law: Examining the economic principles behind antitrust enforcement and competition policy.

Conclusion: Summarizing the key findings and highlighting the future directions of economic analysis of law.

Article Explaining Each Point of the Outline:

(Note: Due to space constraints, I cannot write a full-length article explaining each chapter of Posner's book. This would require multiple thousands of words. However, I can offer brief descriptions of what each chapter would entail.)

Introduction: This chapter would introduce the fundamental concepts of economic analysis of law, defining key terms like efficiency, wealth maximization, and transaction costs. It would lay the groundwork for understanding Posner’s approach and methodology.

Chapter 1: This would delve into Posner's argument that the common law, through a process of trial and error, tends to evolve towards rules that maximize social wealth. It would likely involve historical examples and legal precedents to support this claim.

Chapter 2: This would analyze the economic rationale behind various aspects of contract law, such as the role of damages, specific performance, and the allocation of risk. It would explore the efficient design of contracts and the consequences of breach.

Chapter 3: This would apply economic models to understand the optimal level of precaution, the appropriate standard of care, and the efficient allocation of liability in tort cases. It would cover various tort theories and their economic implications.

Chapter 4: This chapter would focus on the economic analysis of crime, exploring the rational choice model of criminal behavior and analyzing the effectiveness of various punishment schemes in terms of deterrence.

Chapter 5: This would examine how property rights affect resource allocation and efficiency, and how different property regimes impact economic outcomes. It would consider concepts like externalities and the optimal use of land.

Chapter 6: This would cover the economic justifications for antitrust laws, exploring the costs and benefits of competition, monopoly power, and mergers. It would analyze the impact of various antitrust policies on market efficiency.

Conclusion: This would summarize the main arguments of the book, reiterating Posner’s core tenets and acknowledging the criticisms leveled against his approach. It would potentially point to future research directions.

FAQs:

1. What is the main criticism of Posner's economic analysis of law? A common critique is that it oversimplifies human behavior and ignores non-economic factors like fairness and morality.

1. How does Posner define efficiency in the legal context? Posner generally defines efficiency as wealth maximization, though this is not strictly monetary wealth, but the satisfaction of individual preferences.

1. What is the role of the Coase Theorem in Posner's work? The Coase Theorem plays a crucial role, suggesting that efficient outcomes are achievable even without government intervention if transaction costs are low and property rights are well-defined.

1. How does economic analysis of law contribute to legal decision-making? It offers a framework for predicting the consequences of legal rules and for evaluating their efficiency in achieving desired outcomes.

1. Does Posner's theory apply to all legal systems equally? The applicability varies, as different legal systems may have different underlying assumptions and structures. The theory is most directly applicable to common law systems.

1. What are some real-world examples of Posner's economic analysis in action? His work has influenced antitrust law, intellectual property law, and tort law, shaping legal decisions and policy.

1. How does Posner's work differ from other approaches to legal theory? It stands in contrast to more formalistic or moralistic approaches by emphasizing empirical observation and economic prediction.

1. What are the limitations of using solely an economic lens to analyze law? A purely economic approach may neglect ethical, moral, and social considerations that are also important in legal decision-making.

1. Is Posner's economic analysis of law still relevant today? Absolutely. His work remains highly influential in legal scholarship and continues to generate debate and research, particularly concerning the role of

efficiency in law.

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1. Law and Economics of Environmental Regulation: Applying economic analysis to the complex challenges of environmental law.

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richard posner economic analysis of law: Economic Analysis of Law Richard A. Posner, 2014-01-08 Lucid, comprehensive, and definitive in its field, this text covers every aspect of economic analysis of the law. Features: Two new chapters, one on intellectual property, one on international and comparative law, both exploding fields of great importance. Earlier editions' questions have been converted to answers, making the book more accessible and informative. Revised to be clearer and less technical. More eclectic, reflecting recent criticisms of rational choice theory, in particular the need to supplement it with insights from psychology. Greater attention paid to judicial behavior, realistically modeled and explained in economic terms. Incorporates insights from the veritable explosion of books and articles published in the last few years on economic analysis of law.

richard 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.

richard 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.

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

richard 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.

richard 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.

richard 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.

richard 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.

richard 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.

richard 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.

richard 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.

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richard 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.

richard 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

richard 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

richard 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.

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richard posner economic analysis of law: Richard Posner William Domnarski, 2016-08-26 Judge Richard Posner is one of the great legal minds of our age, on par with such generation-defining judges as Holmes, Hand, and Friendly. A judge on the U.S. Court of Appeals for the Seventh Circuit and the principal exponent of the enormously influential law and economics movement, he writes provocative books as a public intellectual, receives frequent media attention, and has been at the center of some very high-profile legal spats. He is also a member of an increasingly rare breed-judges who write their own opinions rather than delegating the work to clerks-and therefore we have unusually direct access to the workings of his mind and judicial philosophy. Now, for the first time, this fascinating figure receives a full-length biographical treatment. In Richard Posner, William Domnarski examines the life experience, personality, academic career, jurisprudence, and professional relationships of his subject with depth and clarity. Domnarski has had access to Posner himself and to Posner's extensive archive at the University of Chicago. In addition, Domnarski was able to interview and correspond with more than two hundred people Posner has known, worked with, or gone to school with over the course of his career, from grade school to the present day. The list includes among others members of the Harvard Law Review, colleagues at the University of Chicago, former law clerks over Posner's more than thirty years on the United States Court of Appeals for the Seventh Circuit, and even other judges from that court. Richard Posner is a comprehensive and accessible account of a unique judge who, despite never having sat on the Supreme Court, has nevertheless dominated the way law is understood in contemporary America.

richard 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.

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richard posner economic analysis of law: The Economic Structure of Tort Law William M. Landes, Richard A. Posner, 1987 Written by a lawyer and an economist, this is the first full-length economic study of tort law--the body of law that governs liability for accidents and for intentional wrongs such as battery and defamation. Landes and Posner propose that tort law is best understood as a system for achieving an efficient allocation of resources to safety--that, on the whole, rules and doctrines of tort law encourage the optimal investment in safety by potential injurers and potential victims. The book contains both a comprehensive description of the major doctrines of tort law and a series of formal economic models used to explore the economic properties of these doctrines. All the formal models are translated into simple commonsense terms so that the math less reader can follow the text without difficulty; legal jargon is also avoided, for the sake of economists and other readers not trained in the law. Although the primary focus is on explaining existing doctrines rather than on exploring their implementation by juries, insurance adjusters, and other real world actors, the book has obvious pertinence to the ongoing controversies over damage awards, insurance rates and availability, and reform of tort law-in fact it is an essential prerequisite to sound reform. Among other timely topics, the authors discuss punitive damage awards in products liability cases, the evolution of products liability law, and the problem of liability for mass disaster torts, such as might be produced by a nuclear accident. More generally, this book is an important contribution to the law and economics movement, the most exciting and controversial development in modern legal education and scholarship, and will become an obligatory reference for all who are concerned with the study of tort law.

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richard posner economic analysis of law: *The Crisis of Capitalist Democracy* Richard A. Posner, 2010-01-01 Following up on his timely and well-received book, A Failure of Capitalism, Richard Posner steps back to take a longer view of the continuing crisis of democratic capitalism as the American and world economies crawl gradually back from the depths to which they had fallen in the autumn of 2008 and the winter of 2009. By means of a lucid narrative of the crisis and a series of analytical chapters pinpointing critical issues of economic collapse and gradual recovery, Posner helps non-technical readers understand business-cycle and financial economics, and financial and governmental institutions, practices, and transactions, while maintaining a neutrality impossible for persons professionally committed to one theory or another. He calls for fresh thinking about the business cycle that would build on the original ideas of Keynes. Central to these ideas is that of uncertainty as opposed to risk. Risk can be quantified and measured. Uncertainty cannot, and in this lies the inherent instability of a capitalist economy. As we emerge from the financial earthquake, a deficit aftershock rumbles. It is in reference to that potential aftershock, as well as to the government's stumbling efforts at financial regulatory reform, that Posner raises the question of the adequacy of our democratic institutions to the economic challenges heightened by the greatest economic crisis since the Great Depression. The crisis and the government's energetic response to it have enormously increased the national debt at the same time that structural defects in the American political system may make it impossible to pay down the debt by any means other than inflation or devaluation.

richard posner economic analysis of law: *Fairness in Law and Economics* Lee Anne Fennell, Richard H. McAdams, 2013 Although the relationship between fairness and the economic concept of efficiency is usually cast as an adversarial one, this collection demonstrates the robust and diverse ways in which economics engages - and cannot avoid engaging - with fairness. Part I contains papers presenting positive analyses of fairness preferences and beliefs, which are fundamental means through which fairness matters for economic models. Part II turns to normative analysis and the broad question of how law should reconcile fairness and efficiency considerations. Part III presents a sampling of legal and policy applications in which both fairness and efficiency considerations prove important. Along with an original introduction by the editors this is a must-have volume that will appeal to students, academics and practitioners who are interested in this exciting field.

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richard 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 Posnere(tm)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 Posnere(tm)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.

richard posner economic analysis of law: *Behavioral Law and Economics* Eyal Zamir, Doron Teichman, 2018 In the past few decades, economic analysis of law has been challenged by a growing body of experimental and empirical studies that attest to prevalent and systematic deviations from the assumptions of economic rationality. While the findings on bounded rationality and heuristics and biases were initially perceived as antithetical to standard economic and legal-economic analysis, over time they have been largely integrated into mainstream economic analysis, including economic analysis of law. Moreover, the impact of behavioral insights has long since transcended purely economic analysis of law: in recent years, the behavioral movement has become one of the most influential developments in legal scholarship in general. Behavioral Law and Economics offers a state-of-the-art overview of the field. Eyal Zamir and Doron Teichman survey the entire body of psychological research that lies at the basis of behavioral analysis of law, and critically evaluate the core methodological questions of this area of research. Following this, the book discusses the fundamental normative questions stemming from the psychological findings on bounded rationality, and explores their implications for setting the law's goals and designing the means to attain them. The book then provides a systematic and critical examination of the contributions of behavioral studies to all major fields of law including: property, contracts, consumer protection, torts, corporate, securities regulation, antitrust, administrative, constitutional, international, criminal, and evidence law, as well as to the behavior of key players in the legal arena: litigants and judicial decision-makers.

richard 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.

richard posner economic analysis of law: Imperfect Alternatives Neil K. Komesar, 1997-01-15 Major approaches to law and public policy, ranging from law and economics to the fundamental rights approach to constitutional law, are based on the belief that the identification of the correct social goals or values is the key to describing or prescribing law and public policy outcomes. In this book, Neil Komesar argues that this emphasis on goal choice ignores an essential element—institutional choice. Indeed, as important as determining our social goals is deciding which institution is best equipped to implement them—the market, the political process, or the adjucative process. Pointing out that all three institutions are massive, complex, and imperfect, Komesar develops a strategy for comparative institutional analysis that assesses variations in institutional ability. He then powerfully demonstrates the value of this analytical framework by using it to examine important contemporary issues ranging from tort reform to constitution-making.

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