

0350

LAW AND ECONOMICS IN MEXICO

Andrès Roemer and José Diego Valadés

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Abstract

Despite its almost exponential growth, particularly since 1983, economic analysis of law is still an area of minor importance in Mexico. Economic analysis of law is still not an integral part of legal education. Legal scholarship is formalistic in general, and is concerned more with definitions than with the purposes of legal provisions.

This discipline's main achievement in the academic community has been its contribution to forming a different juridical mentality, whether of research, policy or analysis.

Since its establishment on April 6, 1995, the Mexican Academy of Law and Economics has carried out several academic, teaching and research activities.

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1. Introduction

Despite its almost exponential growth, particularly since 1983, economic analysis of law is still an area of minor importance in Mexico. However, its growth rate and the weakness of its adversaries are indications that economic analysis of law will soon become an important trend in legal research and in public policy matters.

There are approximately 40 people working in this field. Some are full-time academicians and most of them work for the federal government. Their writings are concerned mainly with the problems of the Mexican regulation system and are almost always written in Spanish. Because of their small number and their relatively high demand, research tends to cover a considerable diversity of topics instead of concentrating on particular areas. Among others, we can mention the following topics that have been the object of analysis in this field: regulation, law and economics, education, the economics of water, contracts, ownership, institutions, public services, labor legislation and domestic trade.

It should be mentioned that legal knowledge in Mexico is formalistic in general, and Mexican legal scholars have a greater relationship with

scholars of continental Europe, particularly with Spanish, Italian and French academicians, than with Americans, the ones who substantially inspired this discipline. On the other hand, the participation by legal scholars in the political process is remarkable. This influence is characterized by different routes, significantly through members of courts, the executive branch, the Congress, and the high-level bureaucracy.

Based on the foregoing, in Mexico a large part of the evolution of economic analysis of law has grown significantly from public sector parameters. Lawyers and economists, particularly specialists in microeconomics theory, keep in mind the usefulness of economic analyses of law in the field of public policy. An important example in this respect is the new agrarian legislation that, without ignoring the principles of justice, was clearly revised using standards of economic efficiency.

2. Law and Economics at Mexican Universities

In the academic community there are few Mexican universities that show any interest in economic analysis of law. Among them we can mention the Autonomous Technological Institute of Mexico (ITAM), Center for Economic Research and Teaching (CIDE). Likewise, a certain interest has been detected in the Law School of the National Autonomous University of Mexico (UNAM) (since the new curriculum of 1993, there exists a course related to economic matters in each of the 10 semesters), the National Institute of Public Administration (INAP), and the University of the Americas in Puebla (UDLA).

This discipline's main achievement in the academic community has been its contribution to forming a different juridical mentality, whether of research, policy or analysis. Students often see the emphasis on the real or potential effects of law and economics through the incentives it produces and the importance of the costs of the legal system as the main contribution of the economic approach to law.

In law schools, most teaching related to economics is given in courses that concern economic theory, history of economic thought and economic law (part of Mexican social law). These courses are part of the law schools' curriculum (first, second and seventh semesters respectively). This teaching lasts approximately four months per term.

3. The Mexican Academy of Law and Economics

As regards economic analysis as a movement, the Mexican Association of Law and Economics (called Mexican Academy of Law and Economics since

May of 1997) (AMDE) was founded on April 6, 1995 with the important support of professors Robert Cooter and Albert Fishlow, as well as of the former President of Mexico, Miguel de la Madrid Hurtado, the former Federal Attorney of Mexico, Pedro Ojeda Paullada, the President of the ITAM, Dr Arturo Fernández, and Andrés Roemer. Being part of the Latin American and Caribbean Association of Law and Economics, the AMDE has more than 30 founding members, 27 numerary members (who have presented academic papers and are current with their fees), as well as 25 supernumerary members (who are current with payments but have not presented any related academic paper) and another 400 people interested in the Academy (who attend congresses and seminars).

Since its establishment on April 6, 1995, the Mexican Academy of Law and Economics has carried out academic, teaching and research activities among which the following should be mentioned:

To date more than 137 research papers have been compiled that address 'Economic Analysis of Sexual Commingling and Regulation', 'Microeconomics of Civil Liability and the Marriage Contract', to 'Analysis of the Free Trade Agreement'.

- A data base in the subject has been formed with 9000 academic essays from more than fourteen countries, indexed by place, topic and author.
- Two National Congresses have been held with more than 200 participants in each one.
- Economic Analysis of Law courses have been implemented in the Autonomous Technological Institute of Mexico (ITAM), in the Center for Economic Research and Teaching (CIDE) and in the Autonomous Metropolitan University (UAM), as well as seminars in the National Institute of Public Administration (INAP), the University of the Americas, Puebla Campus and in the Law School of the National Autonomous University of Mexico (UNAM).
- The Annual National Law and Economy award was established for the best research paper in the area, as well as the Robert Cooter Award for the best academic paper in Law and Economics from the ITAM.
- The respective Academies were likewise formed in the States of Puebla, Coahuila, Chiapas, Jalisco, Oaxaca and Veracruz.

4. Perspectives

As regards publishing services, no single journal has been created dedicated specifically to the economic analysis of laws. Lawyers are critical of economic analysis of law. One of the reasons could be that Mexican academic lawyers lack an understanding of quantitative methods; another reason is that there has been scant contribution by Mexican economists to law, although some economists have taught in the law schools and, more significantly, a number of legal scholars question the essential deontological bases and the fundamental validity of economic analysis in general.

As can be seen, economic analysis of law is still not an integral part of legal education. Mexican juridical training and some other institutional circumstance can explain the reason why. Juridical formalism in Mexico is concerned more with definitions than with the purposes of legal provisions. On the other hand, the economic approach to law would seem instrumental and deals mainly with how certain aims can be achieved by giving the member or members of a society incentives. However, we should not be pessimistic as to the future of economic analysis of law in Mexico. The positive factors must not be overlooked. In the first place, as mentioned previously, academic lawyers and economists have an interest in applying economics to law. In the second place, in some law schools there seems to be a dissatisfaction with the traditional teaching of law as an autonomous discipline. Thirdly, a considerable number of young academicians are interested in the international perspectives, and consequently in the new juridical perspectives. Lastly, as was shown, the application of economic analysis of the legislation in force in Mexico has produced fruits and is being practiced profusely. This will probably be reflected in legal education in the medium and long terms.

Thus, the presence and influence of economic analysis of law will continue to grow, both from the legal and from the social point of view. The future of law and economics in Mexico depends crucially on the ability of this discipline to show in a simple way, not just the potential but the real value of this approach. It must also show its own limitations and reciprocities with the science of law: the what and the how of legal knowledge can contribute to the development of law and of economics. This kind of cooperation is necessary for an interdisciplinary approach such as law and economics. Meanwhile, public policies will continue to be the main source of demand (and inspiration) for economic analysis of law in this country.

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