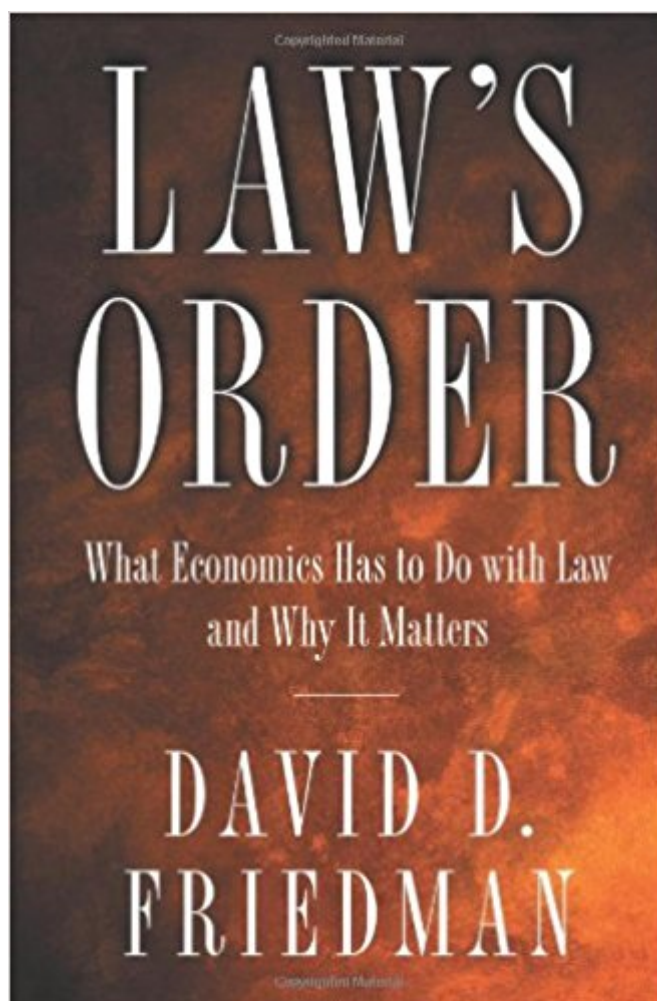


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# Law's Order: What Economics Has To Do With Law And Why It Matters



## Synopsis

What does economics have to do with law? Suppose legislators propose that armed robbers receive life imprisonment. Editorial pages applaud them for getting tough on crime. Constitutional lawyers raise the issue of cruel and unusual punishment. Legal philosophers ponder questions of justness. An economist, on the other hand, observes that making the punishment for armed robbery the same as that for murder encourages muggers to kill their victims. This is the cut-to-the-chase quality that makes economics not only applicable to the interpretation of law, but beneficial to its crafting. Drawing on numerous commonsense examples, in addition to his extensive knowledge of Chicago-school economics, David D. Friedman offers a spirited defense of the economic view of law. He clarifies the relationship between law and economics in clear prose that is friendly to students, lawyers, and lay readers without sacrificing the intellectual heft of the ideas presented. Friedman is the ideal spokesman for an approach to law that is controversial not because it overturns the conclusions of traditional legal scholars--it can be used to advocate a surprising variety of political positions, including both sides of such contentious issues as capital punishment--but rather because it alters the very nature of their arguments. For example, rather than viewing landlord-tenant law as a matter of favoring landlords over tenants or tenants over landlords, an economic analysis makes clear that a bad law injures both groups in the long run. And unlike traditional legal doctrines, economics offers a unified approach, one that applies the same fundamental ideas to understand and evaluate legal rules in contract, property, crime, tort, and every other category of law, whether in modern day America or other times and places--and systems of non-legal rules, such as social norms, as well. This book will undoubtedly raise the discourse on the increasingly important topic of the economics of law, giving both supporters and critics of the economic perspective a place to organize their ideas.

## Book Information

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## Customer Reviews

Friedman, a professor at the University of Santa Clara School of Law who holds a Ph.D. in economics from the University of Chicago, advocates an economic analysis of law and further suggests that there is a strong correspondence between efficiency and justice. Since efficiency is the foundation of modern economics, he argues, economics can be used to explain and shape the law in ways that can benefit us all. Especially insightful is the author's application of this theory to tort and contract law, which impose obligations based upon law and mutual consent, respectively. Friedman delineates formulae for dispute resolution in these and other areas of the law. His approach is modeled upon the teachings of noted British economist Ronald Coase, whose theorem on transaction costs has formed the basis for analysis of economic problems arising from tort and contract litigation for the last 40 years. The book's specialized audience includes students of law and economics served by academic and law libraries and perhaps private firm libraries whose staff serve client needs in the two aforementioned areas of litigation.-Philip Y. Blue, New York State Supreme Court Criminal Branch Law Lib., New York Copyright 2000 Reed Business Information, Inc. --This text refers to the Kindle Edition edition.

The author sets out to provide an economic analysis of law. We learn that economics, whose fundamental issue is the implications of rational choice, is an essential tool for figuring out the effects of legal rules. Knowing what effects rules will have is central both to understanding the rules we have and to deciding what rules we should have. The first section of the book considers basic economic concepts, such as rationality and economic efficiency, that can be used to understand a wide range of legal issues. The book's second section applies economics to the analysis of the core areas of law, such as intellectual property and contracts. Friedman, a law school professor and economist, states that his target reader for this book is an intelligent layman, followed by law professionals and students. Another view is that this is really a textbook in disguise, which will be used primarily in the classroom by the author and other law professors. Mary Whaley --This text refers to the Kindle Edition edition.

The layman's view of law is that it has to do with justice, and the layman's view of Economics is that

it has to do with who gets what. This is not correct. The early legal scholars, Grotius, Pufendorf, Locke and others, despite their disagreements, all stressed that property rights law was justified by the fact that an individual will not invest in the improvement of a valuable resource (land, idea, factory) unless he can expect to enjoy the fruits of this investment, and secure ownership is the best means of ensuring that this is the case. In other words, the legal institution of property rights served to improve economic efficiency, not justice. Or rather, as David Friedman would say, our ideas of the justice of property rights are the effect of the efficiency of the institution of property rights, and not vice versa. *Law's Order* is a wonderful, exciting, and hugely informative book. It never lowers its standard of rigor (a very high standard), but avoids all mathematical modeling and never makes a silly argument simply because there is some outlandish economic model that supports it. One need not always agree with Friedman in order to appreciate the power of his argumentation and the limpidity of his writing. The most important theoretical term that must be mastered is that of 'economic efficiency.' The concept is not simple, and only by many varied examples will the reader come away with an appreciation for the strengths and weaknesses of the concept. Basically, an economic arrangement is efficient if there is no alternative arrangement that can make all individuals, even those not participating directly in the arrangement better off according to their own preferences. We also say that moving from situation A to situation B improves efficiency if the winners from moving to B could compensate the losers so that all are better off. A perfect example of an efficiency improvement is where a firm produces harmful effluents that contribute to polluting the natural environment. A firm that releases harmful effluents can simply be prevented from doing so, thus likely leading to the closing of the firm. However, if the cost to society from, say, a ton of effluent can be accurately measured, the firm can be asked either to pay a price per ton of effluent equal to this cost or cease production. The firm can then find a profit-maximizing level of effluent production, and if profits are positive at this level, the new situation, with a lower level of effluent and a tax on the effluent, may be more efficient than either the original situation or simply closing down the firm. Friedman's central assertion is "the thesis, due to Judge Richard Posner, that the common law, that part of the law that comes not from legislatures but from the precedents created by judges in deciding cases, tends to be economically efficient." (p. 15) Most of the book consists of an extended argument supporting the above statement. If Friedman is correct, and he may well be (I cannot think of an exception to his assertion, although of course I am not a legal scholar in any way), common law is then an incredibly stunningly useful social institution. For instance, many people, especially right-wing ideologues, claim that that free markets are efficient, but economic theory does not support this statement (there are externalities, public goods, increasing returns

industries, and dynamic fragilities, all of which reduce the efficiency of markets and may possibly be improved through some non-market intervention). Here we have a true expert in Law and Economics, our author, who claims that the dynamics of common law in America "tends to be economically efficient" with no systematic deviations at all. I come from this book not only marveling at the author's analytical and exegetical skills, but also wondering why common law has this character. Many human social institutions contribute strongly to our success as a species and our happiness as individuals and families, but I know of none other that can truly be said to be efficient, without some systematic deviations from efficiency. Friedman does not say why common law is efficient, and I know of no one who has developed a model to explain this fact. Note that legislative law is often inefficient. For instance, a free market in body parts is illegal in virtually every country around the world. This creates huge inefficiencies. For instance, thousands die each year waiting for kidney transplants from compatible donors, but it is illegal to buy a kidney from a healthy person who would love to sell it, perhaps to buy an iPod and a pair of Nike sneakers, or perhaps to pay for a life-saving surgical procedure for his mother. I am sure also there are rich people who would be willing to pay for human eyes that it pleases them to float in a crystal prism while they eat breakfast, and poor people who would gladly give an eye for the money to send their children to decent schools. But these efficiency enhancing exchanges are forbidden by law. According to Friedman, if the issue were left to common law, such exchanges would be allowed, and I cannot see that he is wrong. Of course, this does not mean that all legislated law is inefficient. Indeed, quite the opposite is the case. Consider, for instance, laws that oblige sellers to truthfully represent their wares. Without this sort of law, honest sellers would be driven out of the market by dishonest sellers unless the honest sellers could find an alternative way of guaranteeing the quality of their products (e.g., warranties or reputation). In general there is no way short of government regulation by independent judgmental bodies of experts to achieve this, because when a firm is in financial trouble, it will ineluctably sacrifice long-term profitability in favor of short-term survivability. Experience, in addition, shows that when the level of corruption in a society is low, its government tends to frame and enforce such truth in advertising laws rather competently. It is a rather difficult exercise in economic modeling to show that truth in advertising improves efficiency (it does, after all, harm the dishonest seller), but it can usually be done. Product safety regulations, however, are generally inefficient. Take the American FAA, which specifies complex safety regulations for private and commercial airlines. Their philosophy is "one size fits all," so travelers who are willing to take a higher risk of an accident are not permitted to do so. A libertarian would probably suggest that airlines be forced to reveal the risks involved in flying with them, but no regulation beyond that. Friedman's thesis implies

that when justice conflicts with efficiency in common law, efficiency always wins out. Friedman supports this statement in two ways. First, we tend to consider a law just when it is efficient. For instance, if a lawnmower manufacturer can prevent a certain type of accident at low cost by installing a flange near the mower blade, but the user cannot prevent the risk of injury through normal prudence, then a common law precedent of holding the producer liable for injuring the user will be perceived as just. However, if the user can avoid injury through normal prudence, but the producer cannot prevent injury through user carelessness, both justice and efficiency will place negligence liability with the user. Friedman's second defense of the efficiency principle is based on a very famous argument first made by Nobel prize economist Ronald Coase in his article "The Problem of Social Cost" in 1960---a paper that really started the whole Law and Economics research area. Coase noted that if one party causes harm to another, and if there are no transactions costs, then In law and economics, the Coase theorem, attributed to Ronald Coase, describes the economic efficiency of an economic allocation or outcome in the presence of externalities. The theorem states that if trade in an externality is possible and there are no transactions costs, bargaining will lead to an efficient outcome regardless of the initial allocation of property rights. Therefore the careful and unambiguous specification of property rights, which can be accomplished in common law through precedence, will promote efficiency. Consider, for instance, the issue that Coase dealt with before publishing his 1960 paper: eliminating interference between radio stations in the broadcast frequencies they use. He reasoned that so long as the law clearly stated who has rights to what (for instance, the conditions under which a new radio station can broadcast on a certain frequency band), then bargaining among broadcasters would eventually lead the right to broadcast in the hands of the entrepreneur who stands to gain the most from broadcasting on that frequency band by putting the radio station to its most economically valued use. Of course it matters to the broadcasters which one initially has the right, but standard property rights law (e.g., the Lockean right to appropriate from nature by mixing one's labor with an unutilized resource, plus the justice of voluntary exchange) might well speak to this problem. Perhaps the Coase Theorem might be the basis for explaining why common law is efficient and why efficiency tends to justify patterns of ownership. At any rate, I am sure that most readers will find this book very valuable, and if there is a major critique of Friedman's argument that I have not expressed, perhaps a reader will relay this to me in a comment.

Law's Order was the primary text in my Economic Analysis of the Law class in law school, but I think it is sufficiently accessible for the layman, which is why I'm taking the time to review it. It's the rare

book that can be read cover-to-cover and used as a reference with equal success. His target audience in mind (math-phobic law students), Friedman (son of Milton) has stripped the main text of formulas (and, more unfortunately, charts) while leaving markers to indicate where you may find the math on his website. Friedman's prose is informal, (relatively) jargon-free, and interspersed with regular allusions to Vikings, Redcoats, and the King's Messengers to liven things up (Friedman is an ardent recreational medievalist and has written a fantasy novel). Law's Order consists of an extensive introduction to economics as it applies to the law followed by chapters devoted to specific areas of the law (e.g., intellectual property, contracts, etc.) Most of the major areas are covered, although constitutional law (admittedly an immature branch of law & economics), agency law, and business associations are omitted. Game theory is given a cursory look, and public choice (assuming you don't categorize the entirety of law & economics as public choice) and behavioral law & economics are absent. But public choice at least certainly deserves an entire book of its own. As would be expected given Friedman's outside interests, ample historical context is provided. The central dilemma of a survey of law & economics is that there is just so much to cover. That is Law's Order's ultimate failing. Some very valuable topics aren't covered (business associations) and others aren't given proper attention (intellectual property, which is probably worthy of a few chapters). Charts are in my mind a must have in any economics textbook, even one aimed at text-friendly lawyers. A website can only do so much to remedy this, and Friedman's website isn't much to speak of. But those are the sort of things that separate very, very good from perfect. This is still the first book I recommend to anyone looking for an introduction to law & economics (perhaps paired with a public choice primer like Government Failure by Tullock).

Excellent conditions! So far a good book!

Clearly written, good for the smart layperson. A helpful and persuasive introduction to law and economics as conceived by the Chicago school, though some of Friedman's more radical policy suggestions (nearer the end) may make you wonder if we haven't missed something conceptually important; I also recommend Malloy's "Law and Economics" for a broader perspective that offers a critique of the implicit assumptions Friedman's chosen model without endorsing a contrary position. (For those who do want the contrary of Friedman's viewpoint, there's the whole field of critical legal studies out there.)

I had some small problems with the obsession of looking at all problems through the lens of some

theoretical optimum; also with the refusal to take into account justice (i.e. in any law, who gets reimbursed matters, but that aspect is ignored for this book). Still a wonderful read for those interested in either law or economics. Beware, some heavy thinking is required.

Quick delivery, exactly as expected.

It's a dense and fun work in a very interesting and important topic. It was my first book on law&economics, and I am very satisfied with it. I highly recommend it especially for those who love economics--you will learn fascinating insights. The chapters on tort and criminal law were my favorites. David Friedman is a great teacher, in print or talk (if you haven't seen him speak, don't miss a chance).

The book arrived on time, however, it has a black dot along the edge of the book. The ink has seeped into at least 50 pages, and is actually quite annoying because I'm the sort who likes books pristine. However, because I urgently need this book, I suppose it can't be helped.

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