

LAW, ECONOMICS AND JUSTICE

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ABSTRACT

“Law and economics” – the economic analysis of law - has become the dominant mode of discourse in US jurisprudence and has been making significant inroads in the UK. Its impact is being felt particularly in business related fields of law, such as company law, where its use has been a noticeable feature of recent law reform work by the Law Commission and the Modern Company Law Review Steering Group. This has provoked a considerable volume of academic interest in the field of company law, both as to the theoretical basis of economic analysis and as to its practical application. Much of the literature has been critical. The reason for this is that economic analysis involves the making of fundamental assumptions as to the nature of human rationality, institutions, the role of the state and the individual. At the risk of caricature, economic analysis appears to be portrayed as encouraging individual greed at the expense of society as a whole.

It might be expected, therefore, that a Christian perspective on economic analysis would be harshly critical. In contrast, it is the purpose of this paper to demonstrate that there is much in common between a Christian analysis of law and an economic analysis of law. The assumptions made as to human rationality, institutions, the role of the state and the individual are very similar, indeed, some of these assumptions can be demonstrated to have arisen from the observation of societies where there was a strong Christian influence on the law. This has ensured that when economic analysis is adopted in a “positive” sense, i.e. to predict and explain, that the results are consistent with what might be expected from a Christian perspective. However, where economic analysis and Christian analysis of the law are more likely to diverge is when economic analysis is used in a normative sense, i.e. to guide the development of what the law should be, because of the differing perspectives on the meaning and content of the concept of justice. Nonetheless, this paper will conclude that there are many valuable lessons to be derived from the economic analysis of law in developing a Christian perspective on law.