

# The Current State of Law-and-Economics Scholarship

Henry Hansmann

## Introduction

This paper is far less ambitious than its title might suggest. It would be impossible to offer a comprehensive and critical survey of law-and-economics scholarship in a single short essay. My objective here is simply to develop some broad themes in an effort to provide some perspective on the law-and-economics literature in general and to stimulate further thought and discussion.<sup>1</sup>

Section I of this paper tries to define what it is that we mean by "law-and-economics" scholarship. Section II undertakes a brief survey of the areas of law in which law-and-economics scholarship has and has not taken root and speculates about the reasons for the peculiar pattern of development that we see. Section III explores some of the positive contributions that economics has made to legal scholarship. Section IV considers some of the weaknesses in current efforts to apply economics to the study of law and suggests a few remedies. Finally, Section V inquires into the long-run prospects for the vitality of law-and-economics scholarship.

### I. What Is Law-and-Economics Scholarship?

Before seeking to assess the actual and potential contribution of law-and-economics scholarship, it is important to understand what we mean by the term. To this end, it is helpful to distinguish three categories of scholarship: (1) straight economics scholarship, (2) straight legal scholarship, and (3) law-and-economics scholarship. In what way does the third category differ from the first and second?

It is relatively easy to distinguish between the second and third categories. Those works of legal scholarship that make self-conscious use of economic

**Henry Hansmann** is Professor of Law, Economics, and Public Policy, University of Pennsylvania. For helpful discussions and comments, the author would particularly like to thank Bruce Ackerman, Guido Calabresi, Ronald Gilson, Alvin Klevorick, Anthony Kronman, A. Mitchell Polinsky, George Priest, Robert Pritchard, Samuel Rea, Susan Rose-Ackerman, and Oliver Williamson.

1. The subject that I was asked to address for the Conference on the Place of Economics in Legal Education, for which this paper was originally prepared, was "Issues in and Contribution of Law-and-Economics Scholarship." Although I have given the paper a less awkward title, I have tried to direct my remarks to the topic as originally defined.

© 1983 by the Association of American Law Schools. Cite as 33 J. Legal Educ. 217 (1983).