LAW
and
ECONOMICS
2.0
Chicago’s New Law and Economics Initiative
By Marsha Ferziger Nagorsky
“Law and economics is today a permanent, institutionalized feature of American legal education. . . . The law-and-economics movement has transformed the way that teachers . . . think about their subject and present it to their students. And in almost every area of law a working knowledge of economics is now required to keep abreast of scholarly developments, whether one is sympathetic to the movement or not. This is the single most important change in American legal education in the last twenty-five years . . . .”


It is hard to imagine the landscape of the law in 2011 had no one ever put the disciplines of law and economics together. Entire fields of law—antitrust, tort, corporate, property law—have been completely transformed by the movement, and nearly every area of law has been affected by it in some way. It pervades every legal classroom and casebook in America. And as readers of the Record well know, the University of Chicago Law School was the driving force in making that a reality.

In this issue of the Record, you will read about the history of law and economics from its birth at the Law School to the present. You will read about our extraordinary—and large—law and economics faculty and some of the new joint appointments with the economics department. You can even read some fascinating predictions on the future of the entire discipline of law and economics from some of our best minds. But what is the future of law and economics at its birthplace—here at the Law School? For that question, we have more than predictions, we have an answer: The University of Chicago Law School Institute for Law and Economics.

The Institute, founded this fall under the leadership of Professor Omri Ben-Shahar, “will ensure the Law School’s continued preeminence in the field by promoting scholarship and education in the field of law and economics and a dialogue among faculty throughout the University—especially faculty from the Booth School of Business, the Department of Economics, and the Law School,” says Dean Michael Schill. “No school can offer more impressive faculties in these departments than the University of Chicago; their interactions create intellectual alchemy.”

“With help from the Olin Foundation, the Law School grew into the uncontested leader in law and economics by the 1970s,” says Ben-Shahar. “Other law schools have since had a chance to catch up, to continue what Chicago has started, and give us tough competition, so it’s time we created something we have never had before—a center for law and economics. We will build on what we have done in the past, but take it all to the next level and launch new, more ambitious, activities.”

The things the Law School has been doing for decades that have made it the leader in law and economics scholarship and education include a large and extraordinary faculty teaching a wide range of courses and producing cutting-edge research; the Law School’s flagship peer-reviewed journals, the *Journal of Law and Economics* and the *Journal of Legal Studies*; several provocative conferences each year; the legendary Law and Economics Workshop; postgraduate fellowships in law and economics; visiting professorships; and support for student research and writing in the field. The Institute will bring these efforts under a single umbrella and support many of them in new ways, such as increasing support for empirical law and economics research through the hiring of trained professionals to assist in the creation and management of the large datasets this research requires; providing additional editorial assistance for the journals and support for student research assistants; and increasing dissemination of faculty scholarship to audiences outside the legal academy, such as government officials and nonprofit organizations. This umbrella will allow for more efficiency in supporting the large faculty and many activities related to law and economics and give greater structure to the myriad interdisciplinary efforts that it will engender.

Most importantly, the Institute will have five main new initiatives to both deepen the study of law and economics at the University of Chicago and broaden the impact of law and economics throughout the world: the Globalizing Law and Economics Initiative; a judicial training program; support for experimental law and economics; a program to promote joint empirical research and teaching among the law, business, and economics faculties; and a new JD/PhD program in law and economics.

**GLOBAL AND COMPARATIVE LAW AND ECONOMICS**

Any JD graduate who interacted with LLM students during his or her time at the Law School knows that as much as law and economics has completely infused American
law and legal education, it has touched few legal systems outside our country. With the exception of Israel, a hotbed of law and economics research, the rest of the world has nearly completely avoided the impact of economics on law. “Europe, China, Latin America, India—all have big legal systems, big legal issues, and big initiatives for transformation,” says Ben-Shahar, “but as far as law and economics, they are largely barren land, recognized by some professional economists but largely ignored in law schools. Dramatic changes are being made in those legal

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systems, and law schools are at the forefront, but they are doing it without the analytical tools of law and economics.” Chicago academics are already doing substantial work in applying the tools of law and economics in international law. As you can read elsewhere in this issue, Tom Ginsburg’s Comparative Constitutions Project collects massive amounts of data on the formal characteristics of written constitutions so that scholars may empirically investigate the reasons behind and consequences of constitutional choices. Eric Posner’s groundbreaking work applying law and economics to such diverse areas of international law as the law of the sea, international courts and arbitration, and climate change policy has provided new insights to entire fields.

The vision of the Institute is to integrate Chicago-style law and economics with international topics. The Institute will endeavor to create a two-way street: Chicago academics will increase their interest in global topics, and international scholars will increase their use of our methods. One way of doing this will be to increase visiting appointments from foreign countries. This past year, Gerhard Wagner, ’95, a renowned professor of German and European Private Law and Civil Procedure, Private International Law, and Comparative Law at the University of Bonn, visited at the Law School, and in 2011–2012, the Law School will host both Professor Giuseppe Dari-Mattiacci, a law and economics professor from the University of Amsterdam, and Ariel Porat, Alain Poher Professor of Law at Tel Aviv University. The Institute will also begin hosting postdoctoral fellows from other nations and possibly even summer programs for international students in law and economics.

The Institute will also sponsor regular symposia and conferences that will, over time, cover a variety of different issues facing a myriad of different global locales. Some of these conferences will take place in foreign countries with Chicago Law scholars traveling to participate, while others will occur at Chicago Law with foreign legal scholars in attendance. The first of the Chicago-hosted conferences, on the harmonization of European law, will take place in May 2012. Ben-Shahar is organizing this event with input from Wagner and Professor Fernando Gómez of Pompeu Fabra University in Barcelona. Ten members of the Chicago faculty will contribute original articles on the European uniform code initiative and will be joined by some of the most prominent private law scholars from the European Union who are also involved in an official capacity in harmonization. “This conference will reverse Karl Llewellyn’s legacy. While Llewellyn borrowed European ideas in drafting the Uniform Commercial Code, we will offer the drafters of the European Uniform Code some American ideas,” said Ben-Shahar.

FROM THE CLASSROOM TO THE COURTROOM

From the days of the Kalven and Zeisel jury project to the current work of professors Tom Miles and William Landes and Judge Richard Posner, the Chicago Law faculty has been studying the inner workings of our judicial system for more than a half century. But many of today’s judges went to law school before law and economics was part of every legal course, and even those who experienced it as students may never have been trained to use it in judicial decision making. The Institute is uniquely positioned to provide such training.

The sheer size of our faculty and breadth of their expertise alone would be enough to support such a program. However, our faculty members also bring to the table both the technical background in economics that the judges need and deep, long-term study of the judicial system. Much of the work Institute scholars do has a direct relevance to the decisions judges make every day, whether they are the complex policy considerations of an antitrust case, the calculations involved in determining mass tort damages, the allocation of rights and burdens in property and environmental disputes, or the proper scope of a patent
claim. The administration of justice can be improved by training judges to use the tools of economics and the substantive results of the research done by Institute scholars.

Certainly, the benefit here will not just extend to the judges. Both the pedagogy and the scholarship of Institute faculty will be enriched by regular discussion and interaction with judges. Law School students as well will benefit from the opportunity to interact with judges, and the Law School will develop relationships that may lead to increased placement of students and alumni in judicial clerkships.

Judicial training in law and economics is likely to take multiple forms. The Law School will begin offering an annual conference for judges, taught by Institute faculty members. This conference will provide instruction in both standard and cutting-edge areas of economic analysis of law, such as behavioral law and economics and experimental law and economics, as well as explore new law and economics research in substantive areas of law particularly relevant to judges, such as criminal law, commercial law, and intellectual property law. The Institute will also offer more focused and intimate judicial training programs providing more depth in individual substantive areas and analysis techniques. These intense multiday seminars, also taught by Institute faculty, will concentrate on teaching judges the methods they need to apply economic analysis to their everyday work. These conferences and programs will not only provide training to the judges, but give judges and faculty an opportunity to develop relationships and keep an open dialogue. The Institute will regularly provide judges with faculty publications tailored to their interests in order to continue conversations between conferences.

In addition to providing judges with a toolbox of analytical methods, the Law School plans to continue its leadership role in the scholarship of judicial behavior. Research by Law School faculty such as Richard Posner, Tom Miles, and William Landes will push back the frontiers of our understanding of how judges decide cases. The Law School will engage students and faculty alike through its sponsorship of the Judicial Behavior Workshop, taught again this year by Judge Richard Posner and professors William Landes and Lee Epstein.

**Experimental Law and Economics and Other New Tools**

Seventy years ago, the mere use of economic principles in a law classroom was radical. Today, scholars of law and economics are constantly expanding the tools and
and visiting fellows and professors will be an important part of the Becker Friedman Institute. The Institute will be directed by Professor Gary Becker and Research Director Professor Lars Hansen.

The Law School will be deeply engaged in the Becker Friedman Institute. One tangible result will be an increasing focus on empirical law and economics. The Law School already boasts a number of faculty members who analyze large datasets to better understand the impact of legal rules on economic and social behavior. These faculty, leaders in the field of empirical law and economics, include professors Anup Malani and Tom Miles and newly hired Assistant Professor William Hubbard. They will join newly appointed faculty members James Heckman, John List, Steven Levitt, and Kevin Murphy in pushing the frontiers of law and economics scholarship.

**JD/PhD in Law and Economics**

Increasingly, the field of law and economics is populated by scholars with joint degrees in law and economics. The University of Chicago has an extraordinary comparative advantage in producing faculty in this area based upon the strength, depth, and reputation of both departments. Indeed, three faculty members in the Law School hold PhDs from the University of Chicago Department of Economics. As the joint degree becomes more common, Chicago JD/PhD graduates will infuse other faculties with the methods they learned here.

**The Becker Friedman Institute and Beyond**

In addition to establishing its own Institute for Law and Economics, the Law School is a partner in an ambitious new undertaking—the Gary Becker Milton Friedman Institute for Research in Economics. This Institute, named after two legendary Chicago Nobel Prize winners, is designed to promote the flow of ideas and research among faculty in the Law School, the Department of Economics, and the Booth School of Business. Conferences, symposia, techniques available to them by looking into disciplines that previously would have been thought to have no connection to either law or economics at all. Law and economics scholars are now drawing on hard-core empirical work to support their hypotheses, bringing in techniques and knowledge from experimental psychology to better understand human behavior and joining forces with scholars in disciplines such as critical legal studies and identity studies to gain greater understanding of the effects of class and race on markets and policy.

Perhaps most interesting is the discipline known as “experimental law and economics,” which uses laboratory experiments to study and develop theory. Pure economics has been using the laboratory for somewhat longer than law and economics, but its use in the latter discipline is rapidly expanding. Where economists have long used human experiments to test theories about pricing models, law and economics uses similar experiments to explore the ramifications for antitrust law and policy. Law and economics can also use laboratory studies as controlled environments to see if theories hold true in wider policy applications than previously agreed upon. Experimental law and economics can help develop new theories and even new institutions.

Through its workshops, journals, and fellowship programs, the new Institute will promote the use of these new techniques and areas of interdisciplinary study. Some members of the faculty, such as Anup Malani and newly appointed economist John List, utilize advanced experimental techniques in their own work. The growth of the methodology will continue by bringing excellent visiting faculty and fellows in these areas and, in the long term, possibly hiring new faculty members specializing in legal-experimental work. For example, the Law School will host two of the Becker Friedman Institute’s 2011–2012 Visiting Fellows, D. James Greiner of Harvard Law School and Alessandro Acquisti of Carnegie Mellon University, both of whom are leaders in experimental law and economics.

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**The University of Chicago Law School**

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be taken jointly by graduate students in economics and upper-level law students so that they might learn together and from each other. Full-tuition scholarships for jointly enrolled students have already been awarded and will grow in importance as the program takes flight. As Strahilevitz notes, “Chicago graduates who go into law teaching have gotten terrific jobs and become leading legal scholars throughout the academy. But we haven’t produced enough graduates who want to go into law teaching, and too few who have the serious interdisciplinary skills that some law schools demand of their new hires. The new program will let us shine in terms of both quantity and quality. There is no school where students of law and economics can learn as much or learn as quickly.”

OTHER INITIATIVES

Law and economics has evolved a great deal in the last generation. While it is a mature field of scholarship, there are many new areas to be explored. Law and economics, which started as a tool used in commercial and market-based legal disciplines and later expanded to private law and criminal law, has new lands to charter. Law and economics offers profound insights in fields as far-flung as constitutional law, election law, immigration law, and international law, and that work will be done at Chicago.

The Law School has already begun work on other interdisciplinary initiatives, such as cross-departmental workshops. In 2010–2011, the Law School and the Booth School of Business cosponsored the Forum on Contracting, a series of joint forums in which a speaker from another university presented research on contracts and finance. The Forum on Contracting was the brainchild of Ben-Shahar, the Frank and Bernice J. Greenberg Professor of Law and Director of the University of Chicago Institute for Law and Economics, and Richard Holden, Assistant Professor and Neubauer Faculty Fellow at Booth. Ben-Shahar is a contract law scholar; Holden is a contract theorist. Because contracts and finance have grounding in both the business and law disciplines, these five joint workshops brought scholars from both schools together in true interdisciplinary fashion. Other interdisciplinary workshop series will be planned in coming years.

Despite its reputation as a movement favoring limited government intervention in markets, law and economics as practiced at Chicago is nonideological and inclusive. What ties the work of our faculty together is an appreciation of economic incentives and a commitment to the idea that both judicial and statutory law maximize social welfare. Faculty are equally at home using law and economics to support arguments for expanding the role of government in health care and arguing for the contraction of the role of government in regulating employment relationships.

New faculty appointments will help to make this possible, and that work has already begun. On pages 56-57 you will meet two brilliant young law and economics scholars who joined the faculty this fall, Anthony Casey, ’02, and William Hubbard, ’00. On pages 32-35, you will learn about the four extraordinary faculty members in the economics department and Booth School of Business—James Heckman, John List, Steven Levitt, and Kevin Murphy—who will join Gary Becker in accepting joint appointments with the Law School. And, of course, the Law School is aggressively seeking to hire onto its faculty both the leaders of today and those of the future.

Importantly, the Law School will undertake new initiatives to ensure that the work of these scholars has a much more far-reaching impact than ever before. The Law School will launch newsletters and white papers designed to translate the work of our faculty for a more general audience and to disseminate their work in a targeted way to the legislators, administrative agencies, and judges who can put it to good use. “The work of our law and economics faculty has always been useful in real-world situations,” says Schill, “but that is more true now than it has ever been. The Law School will make sure that the production of knowledge that takes place in Hyde Park has an impact far beyond the borders of our neighborhood and indeed our nation.”

Over time, you will hear a great deal from the Law School about the work of the Institute for Law and Economics and the Law and Economics 2.0 Initiative. We’ll tell you about our affiliated faculty members’ groundbreaking research and projects done with students; about fellows and visiting faculty the Institute brings to the Law School; and about conferences, symposia, and workshops held under its auspices. We look forward to sharing the results of the new initiatives with you and showing you how both the judiciary and the global legal academic community are affected by our work and our outreach. Most of all, we look forward to the Institute and the University of Chicago Law School continuing to be at the forefront of law and economics teaching and scholarship well into the 21st century.●