Lawyers and Economists: Who Rules the World?

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An economist’s comment on lawyers

The following is a recent comment made about lawyers by the very distinguished and deservedly famous economist Professor Willem Buiter:

‘Except for a depressingly small minority among them, lawyers know nothing. They are incapable of logic. They don’t know the difference between necessary and sufficient conditions or between type I and type II errors. Indeed, any concept of probability is alien to them. They don’t understand the concepts of opportunity cost and trade off. They cannot distinguish between normative and positive statements. They are so focused on winning an argument through technicalities that they no longer would recognise the truth if it bit them in the butt. If you are very lucky, a lawyer will give you nothing but the truth. You will never get the truth, let alone the whole truth. Things have degenerated to the point that lawyers and the legal profession not only routinely undermine justice, but even the law.’

This observation is mercifully mild compared to other denunciations of lawyers.

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Some leaders

A useful way to start on this problem of who are the keepers of the truth is to set out two lists of leaders as follows:

First list
• Tony Blair
• Fidel Castro
• Maximilien de Robespierre
• Bill Clinton
• Mahatma Gandhi
• Barack Obama
• Christine Lagarde
• Nicolas Sarkozy
• Vladimir Putin.

Second list
• Silvio Berlusconi
• Mao Tse Tung
• Wen Jiabao
• George Bush II
• Angela Merkel
• Gordon Brown
• Alan Greenspan
• Joseph Stalin.

Readers will have quickly appreciated that the leaders in the first list were all trained as lawyers, while those in the second list were not, so far as the author knows.

A short survey of the presence of lawyers in legislative assemblies and cabinets seems to show a high proportion of legally trained people. For example, according to the American Bar Association, in 2006 about 53 per cent of the US Senate and 36 per cent of Congress were lawyers. When Mr Sarkozy of France formed his first cabinet on election a short while ago, nine out of the 16 members were trained as lawyers. The French Minister of Finance M Christine Lagarde is a former managing partner of Baker & McKenzie. The number of lawyers in assemblies elsewhere is thought to be very substantial, though this depends on the country.

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On the other hand, although the author has not carried out a quantitative study, it is highly likely that there is a high proportion of economists in senior policy-making posts in ministries of finance and treasuries, in central banks and of course in multilateral institutions, such as the International Monetary Fund (IMF), the Bank for International Settlements, the Organisation for Economic Co-operation and Development and the European Bank for Reconstruction and Development.

So the issue here is: who is actually making the decisions about our lives and our future on the planet?

It would seem unfair not to mention other candidates for rulers of the world, such as scientists, medical doctors, accountants, management consultants and indeed ordinary people who do straight jobs. Also, we must not omit artists and writers who have, from the beginning, claimed a sacred insight into the human condition and the truth of all things.

Notwithstanding the very compelling claims of these illustrious classes of person who make such a huge contribution to our welfare and happiness, it seems probable that the main people in the driving seat when it comes to ordering everybody around are lawyers and economists.

Validity of stereotypes

The first question must be whether there is something in the way of thinking of these two disciplines - economics and law - that might impinge on competence and the ability to dictate to the rest of the people of the planet how they should conduct their affairs, for example what their political institutions should be, what their law should be, the intensity of their punishments, the tax burden that they should bear, what the cost of money should be and what intrusion the governments of the day should make into our business affairs and our private lives.

We must be careful not to assume that our jobs condition our intellects and emotions, that our work is us. As a common-sense matter, the differences in attitudes and in the innermost core of the human consciousness and mind depend much more on the individual and his or her nurture and nature than on what they did at university and what their jobs are.

Further, we cannot properly lump together all economists in one distinct class and all lawyers in another.

Still, it is worth considering whether the disciplines have features that differentiate them and that might play a part, whether large or small, in the approach of their devotees to major areas of policy-making.

In particular, it is worth at least mentioning some of the stereotypes, if only to reject them as unfounded prejudices. Some of these apparent habits of mind can be listed as follows.
Morality

It is often said that economists are primarily interested in function, usefulness, utilitarianism, efficiency and the weighing of costs and benefits in terms of money. By contrast, it may be said that lawyers, by their training, are more inclined to consider morality, justice, individual freedom and the rule of law. Even lawyers who spend their lives arguing the detail of a gas pipeline contract, of syndicated bank credits, of the terms of capital markets debt issues, of sale and purchase agreements for companies, of joint venture agreements and the like are constantly endeavouring to arrive at what is reasonable and fair. At this business level, you could say that the concept of reasonableness, which is a sort of justice, is embedded in their daily routine.

Language

Economists are masters of metrics and mathematics. They are habituated to expressing their thinking quantitatively in terms of formulae, equations, graphs and models. These figures are considered absolutely and universally true, and even pure and spiritual, at least since Pythagoras. Sceptics say that sometimes the metrics denote crisp boundaries when in the real world there is a continuum or fuzzy spectrum. It is sometimes argued that economists, by virtue of the use of figures, occasionally do not distinguish between causation and correlation, that they promise a prophecy proved by holy mathematics, which, in fact, is as unsafe as all forecasts are, and that models are often too simplistic to reflect the complexity and intricacy of the real world. So their truth, on this theory, is a caricature.

That is a big discussion. Actually, synthesis and distillation are extremely important in any discipline and economists are right to aim at this. So it is not wrong that mathematical models are reductionist, so long as we know that they are.

In any event, lawyers use ordinary language, words and grammar. They have their own jargon and argot, originally no doubt designed as shortcut expressions, but sometimes used to elevate their arcane and esoteric inner knowledge above the rest of the illiterate and barbarian population. As the great philosophers of linguistics have demonstrated, whether Ludwig Wittgenstein or Jacques Derrida, language is slippery, circular, highly qualitative and often does not mean a thing.

Whether or not it does mean a thing is an interesting debate, which we must leave for the moment, other than to note that in some probably impenetrable way the articulation of thought in either mathematical symbols or in common language may have some impact on the approach to truth.

Emotion

It is a ritualistic platitude often bandied about that economists are relatively unaware that people have emotions and feelings. It is true that Keynes referred to ‘animal spirits’ and that Alan Greenspan referred to ‘irrational exuberance’, but these flashes of profundity among economists are considered rare and hence are greeted by economic cognoscenti as extraordinary words of wisdom. Over recent decades, however, economists have discovered this affective side of the human psyche, giving rise to the specialism of behavioural economics. Some economists have gone on to win Nobel prizes for their work in discovering that human beings have got emotions, which sometimes lead them to do silly things. This new discovery may in time erode the economist’s approach that everybody is a rational self-maximiser. On the whole, the stereotype remains that, according to economists, or at least those who support the efficient market hypothesis, we are not stupid, never panic and never do anything out of rage, envy, lust or greed.

Lawyers, on the other hand, have from ancient times been close to emotion. From the earliest eras their codes were concerned with the family, sex, murder, theft and war. Nowadays, the business lawyer daily participates in contractual jousts in negotiating documents or in takeover battles and, when things go wrong, in a formal tournament in a court where all manner of deep emotions and egos are displayed. So they are accustomed to this primitive side of human nature. Their rules, their laws of the game and their tribunals seek to tame the wild urge to kill the competition.

Detail

A further possible distinction, which may also be an unsubstantiated stereotype, is that lawyers are close to the real detail of life, while economists deal in grand generic movements, in large categories of actors and in soft generalised theories. Lawyers deal at the level of minute, pin-picking detail and a meticulous attention to tiny data, the milli, the micro, thenano, the meta. It is for this reason that lawyers are sometimes regarded as plodding pedants, unable to see the big picture and the real truth.

For example, lawyers can easily spend ten years and vast amounts of their clients’ money in arguing a single point in litigation, which explores the virtues or evils of the little point from all possible angles, subjects it to crushing stress tests and has it debated via millions of pages of documents, until finally pronounced on by the highest tribunal in the land. This mighty tumult on a pinhead is then relegated to a little footnote in a great volume composed mainly of similar footnotes: something decided, done, the
resolution. So truth to the lawyer is arrived at through a prodigious tininess on the basis that the accumulation of all of these minutiae over the centuries results in the grandest of edifices called the law.

This is truth by pragmatic experiment. It is legitimate to say this is a sound way to go about the discovery of truth and is scientific in method and diligence.

Its downside is fossilisation. But that applies to all disciplines, including economics — including even physics. People often continue to cling stubbornly to ideas they thought were true, even though the evidence is to the contrary.

The author’s conclusion is that, while it is interesting to throw these factors into the ring, we should not take them too seriously.

**Contribution of lawyers and economists**

We can, however, have a more serious discussion about the overall contribution of the two disciplines to the advance of the human species in its dwelling on this earth, whether long enduring or destined unfortunately to be cut off by some mishap. This mishap may be self-induced or delivered to us by an eyeless and pitiless force of fate.

It is impossible not to have enormous admiration for the achievements of economists in the pursuit of discovering what is really going on. Micro-economics has been brought to great heights of perfection. In the field of macro-economics, economists have elucidated the role of money and the forces behind money; the factors that underlie economic growth; the features of currencies and balance of payments and the incidents of unemployment. They initiated the measurement of productivity and they have refined demography and statistics, commencing with the great 17th century figures of William Petty and Gregory King. In the middle of the last century, they developed the concept of gross domestic product and its analogues. Now you can get numbers on practically anything. They have rewritten history and revolutionised our view as to what really happened through the generations and what the great drivers have been. For example, one cannot help express astonishment at the painstaking scholarship of, say, Professor Angus Maddison and economists like him.

The real contribution of economists is to introduce an empirical scientific method in order to test theories and to place them under the quantitative spotlight. We all know that both economics and law are not sciences in the sense of physics or chemistry, but statistics, figures, quantities and mathematics are crucial in making sensible advances in our understanding.

There is virtually no area of law that would not benefit from this approach to augment the traditional orientation.

Therefore, we can say that economists have brought light into areas that previously were dark.

When we come to the law, lawyers must accept that law is essentially a form of restriction on the freedom of human conduct. The avowed rationale of this restrictiveness is broadly that restrictions are necessary for survival, that is if indeed we are to continue our existence residing on the earth, then we need prescriptive codes of behaviour, which limit our propensity to anarchy and savagery. Of course business lawyers have gone far beyond basic rules about anarchy and savagery. Still, even in their realms, the going can get quite rough, for example in relation to insolvencies.

Companies, banks and capital markets are artificial creatures of the legal imagination, no less fictional than dreams, but still extraordinarily potent and marvelously inventive as engines of economic growth, of technology and enterprise. They were inventions of lawyers, as were constitutions, the criminal law and the rest of the legal edifice. Overall, the lawyer’s contribution has been fundamental in promoting the most primitive objective of preserving the species and creating ingenious structures to do it, including in the fields of productive enterprise and business.

It is remarkable to observe that, in their many fruitful debates about the underpinnings of economic growth, some economists have come round to the view that what really matters is ‘institutions’. By this they appear to mean not just culture but legal institutions. Economists also vaguely refer to ‘contract and property rights’ as being crucial in enhancing economic potential. Lawyers have got whole libraries on contract and property rights and regard economists as being still at base camp on these issues.

These comments may not be fair, but it is considered fair to say that there is a significant and unjustifiable divide between what lawyers and economists are arguing about in their specialist publications, and how they argue the points, a divide that the law and economics movement still does not bridge. Economists do not know enough about law, and lawyers do not know enough about economics.

**Illustrations of difference of approach**

There was a discussion above about whether the nature of the job conditions the approach to policy questions and it was observed that the links are probably rather tenuous. Nevertheless, another way to approach this question, which is nothing to do with conditioning but everything to do with specialisation, relates to the ability to comprehend the full range of issues and questions that have an impact on a policy choice. Specialisation prevents this.
It is clear that both economics and law have vast content. I suspect that
the overall volume of law is much larger than that of economics, especially
in the fields of finance, corporate law and regulatory law. These realms are
now so massive that you need highly specialised experts to deal with just
slivers of each topic. The same may well be true of economics, especially if
the discipline is successful in its territorial grabs, for example of psychology, of
history, of anthropology. The author does not really know how you measure
these things.

Nevertheless, the specialisation and lack of tuning into the real issues can
give rise to dangerous tunnel vision among economics policy-makers. Take
three examples, which, for the sake of being contemporary, are drawn from
policy-making events connected to the financial crisis commencing in 2007.

Pricing of money

Many mainstream economists agree that the 2007 financial crisis was ignited
by central bank policy, especially in the United States, in reducing short-term
interest rates virtually to zero or negative after tax and inflation. In other words,
the Fed gave money away. It was nice to be able to do this because it meant
that homeowners could buy their houses for nothing, and business could
borrow money for nothing and therefore compete with Europe, Japan and the
emerging countries, and that the United States did not have to pay China for
its national debt. The Fed did not have to raise interest rates to beat inflation
because, for various macro-economic reasons, inflation was under control.

We all know now that the result of this policy was that there was an asset
price bubble in the housing sector, fanned by banks, as obviously it would be.
The outstanding amount of US home loans was about the same as the
GDP of the United States (which is just short of a quarter of world GDP).
If, therefore, you think that houses are worth $100, but they are only worth
$70 or even $50, the entire banking system is smashed.

In their debate about this issue of low interest rates, economists have
focused on economic consequences, for example the desirability of
preventing asset bubbles and systemic contagion. But one struggles to find
debate about a point that would be crucial to a lawyer. This is that the central
banks manipulate the price of money that they create. They interfere in the
market value of other people’s money, namely the money of savers. They
can therefore transfer wealth from the providers of the money (savers or
ultimate creditors) to debtors (homeowners and corporate), but without the
population at large really comprehending that this is happening. In other
words, central banks can play Robin Hood. Robin Hood was a very attractive
fellow, but he was also a mugger.

Inflation

The second example flows from a recent proposal by economists at the IMF
to recalibrate allowed inflation rates upwards from two per cent to four per
cent. They advance various economic arguments in favour of the economic
and utilitarian benefits of this policy. Again, it appears not to be central
to the discussion that inflation is a deprivation of the providers of credit,
namely (and ultimately) the citizens who have saved up the money which is
then intermediated through banks and capital markets. The four per cent
is a taking, like an annual tax of four per cent on your wealth. Economists
can get away with this because the public out there do not really follow the
plot. To a lawyer this coercive deprivation is an obvious rule of law issue
about the propriety of arbitrary governmental takings. It is not different in
concept from the feudal kleptocrat who takes your land. Again, the author
is not saying that inflation can never be legitimate but that there is a rule of
law issue to be counted in the balance.

Nationalisation of bankruptcy law

The third example is the current fad for strong-arm bank resolution statutes.
Under these statutes, the authorities can, if they fear a systemic crisis or
financial instability, ‘resolve’ a bank, which, in effect, means that the authorities
can run the insolvency with arbitrary and discretionary powers without court
intervention. They can force conversions of debt into equity and can also
transfer assets away from liabilities or vice versa. These statutes seem to be
largely promoted by policy-makers with an economics background and they
see them as necessary in order to protect the financial system and tax payers.

It evidently is not at the forefront that credit analysis becomes impossible if
there can be partial transfers of assets away from liabilities. This is a functional
argument. More to the point is that the nationalisation of bankruptcy law
strikes at the heart of our system of markets, our system of companies, banks
and institutions, where the big decisions are tested on bankruptcy, which
is the final decision of who survives and who dies. It is crucial in market
economies that the safeguards of the rule of law should prevail in this arena.
intense debates of lawyers on this topic, the views of the economist heroes seem quite crude.

If you were to ask most lawyers who are the great heroes of the law, it is likely that many of them would be hard put to name the names. Some might come up with the identities of great codifiers, or Grotius, or Justinian or some famous judge—not exactly earth-shattering.

The reason for this apparent vacuum is that the greatest lawyers are to be found in deeper recesses of time. Some examples are as follows:

- Moses (with his slate of ten commandments)
- Mahavir (died about 527 BC)
- Siddhartha Guatama or the Buddha (died 483 BC)
- Confucius (died 479 BC)
- Socrates (committed suicide 399 BC)
- Jesus Christ (crucified around 30 AD)
- Mahomet (died 632 AD).

The original lawyers were priests, imams, rabbis, brahmins, codifiers of social behaviour and philosophers of law. According to some people, these religious or semi-religious leaders lost their way and erred on the truth. Certainly, from the commercial perspective, these leaders were not always very helpful on features of business law. One of their main tasks was to formulate principles of moral behaviour, effectively basic rules of law, the foundations of legal systems. This author gladly leaves others to discuss their role, but one can say that their achievement in prescribing good conduct was massive, although often frustrated by the waywardness of human nature and often not adopted by their followers.

Lawyers are not priests, even though the ancestry is common. If lawyers have a belief that binds them, whether or not they are business lawyers, it is the rule of law. The rule of law is secular but its direction is the same and is different from religious sects in that the rule of law is a universal principle.

**Conclusion**

In the quotation at the head of this article, the question was raised as to whether lawyers or economists are better at the truth. This is a pertinent question and one that at last has to be answered, particularly when it comes to who manages government policy, an activity that in turn hinges on our understanding of truth.

Now that the world is secular in most of its regions, the issue is: which discipline is better at determining the principles of survival? Who should be in charge of the questions? Is it economists who are best suited to decide how to face the future? This author is not so sure they are really focusing. By
contrast, lawyers of all stripes, including business lawyers - especially business lawyers - are focusing.

By the way, lawyers should not be too concerned if they do not know the difference between a type I and a type II error. It is very simple, once explained. There is nothing to worry about.

In the end, the question is: are we looking the right way about truth? Is it really about probabilities, the difference between necessary and sufficient conditions, or the concepts of opportunity cost and trade-off? The problem is that at our back we always hear some terrible chariot hurrying near, its horses whipped by a blind charioteer who cares nothing for either GDP or the rule of law. Is it the cat? No, it is not the cat. Whether lawyers or economists, our record so far in turning full face to the charioteer is not good. But turn we have to. That is why this debate about truth is relevant.