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978-0-521-87508-0 - The Language of Law and Economics: A Dictionary

Francesco Parisi

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## The Language of Law and Economics

From a historical perspective, “law and economics” constituted one of the most influential developments in legal scholarship in the twentieth century; the discipline remains today one of the dominant perspectives on the law, generating a tremendous quantity of new research and discussion. Unfortunately, one consequence of applying the analytical methods of one highly technical field to the historically layered substance of another has been the accumulation of considerable technical overhead, requiring fluency in both the language of economics and the language of the law. Further complicating matters, the field of law and economics has sometimes developed independently, creating new terms, while recasting others from their original economic or legal meanings. In this dictionary of law and economics, Francesco Parisi provides a comprehensive and concise guide to the language and key concepts underlying this fecund interdisciplinary tradition. The first reference work of its kind, it will prove to be an invaluable resource for professionals, students, and scholars.

FRANCESCO PARISI is the Oppenheimer Wolff and Donnelly Professor of Law at the University of Minnesota and Professor of Economics at the University of Bologna.

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*To Barbara*

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## INTRODUCTION

As an intellectual movement, the law and economics discipline has three characteristics that are at once strengths and obstacles: *first*, the vast breadth of interdisciplinary contributions, not only from lawyers and economists but also from psychologists, sociologists, political scientists, historians, mathematicians, and philosophers; *second*, the blistering pace at which new ideas emerge, develop, transform, fuse, and divide; and, *third*, the deeply technical components inherent to the law and to economics. Although these characteristics have imbued the field with scientific precision, establishing law and economics in the mainstream of legal scholarship, they have also brought about a prodigious expansion in terminology.

Communication problems plagued the early years of law and economics, as scholars from disparate disciplines struggled to find a common language to accommodate their diverse academic backgrounds. Over the years these communication problems became less pronounced, as a shared vocabulary developed. New terms were invented and established terms from specialized fields were repurposed in an interdisciplinary context. The new language has been a mixed blessing for the growth of law and economics, for, while it facilitates communication between scholars within the field, it also creates barriers for scholars working outside it. This dictionary aims at reducing those barriers.

In the age of electronic information, the idea of a dictionary, quaintly listing terms in alphabetical order, may seem anachronistic. However, the purpose of this dictionary is not merely to assemble and catalogue information, but to provide clear and concise explanations of those foundational concepts that will guide students and scholars in exploring the field of law and economics.

This project began with a handful of definitions that I wrote as a “glossary of terms,” as a resource for students in my law and economics courses. The idea of developing the glossary into a comprehensive dictionary for a larger audience occurred to me after reading through Brian Bix’s *A Dictionary of Legal Theory* (Oxford University Press, 2004). With such an exemplary model, it soon became clear that the work ahead of me was going to require considerably more toil, care, and nuance than I had originally anticipated. Nevertheless, I committed myself to this project, thanks to the positive feedback from my friend Chris Harrison at Cambridge University Press, who commissioned this book under the title *The Language of Law and Economics: A Dictionary*. The new direction suggested by the publisher resulted in a broadening of the scope of the project, leading to the inclusion of definitions not only for the benefit of law students but also for graduate students and professional academics.

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Notwithstanding the more ambitious goals set by the publisher, I have tried to keep the entries simple; I have endeavored to provide basic definitions and foundational concepts, keeping technical details, theoretical extensions, and historical digressions to a minimum. When necessary, more formal definitions are provided in the latter portion of the entry for readers who value the additional layer of information. Whenever appropriate, I have attempted to credit the authors who first coined a new word, gave new meaning to an old term, or popularized a rarely encountered expression in the literature – though I have come to realize that the evolution of terminology in this field is quite often the result of the uncoordinated choices of several practitioners; such terms become attributable to the folk tradition of law and economics rather than any one scholar.

This book, although presented as the work of a sole author, reflects the combined expertise of many talented scholars, who suggested the inclusion of terms, corrected provisional definitions of terms, and occasionally volunteered their own definitions. I am particularly grateful to Giuseppe Dari-Mattiacci, Matteo Rizzolli, Margherita Saraceno, and several anonymous referees for identifying omissions, suggesting ideas, and volunteering their own definitions. Over the years, students from George Mason University and the University of Minnesota have helped me with research and editing. I should especially thank Johna Ohtagaki, Joshua Rusenko, Ryan Patrick, Theresa Stadheim, Chris Schmitter, Jamie Ling, and Emma Denny for their generous research assistance, providing first drafts of many definitions. Thanks must also go to Daniel Pi for his generous and valuable assistance in identifying and correcting problems in the manuscript in its final stages prior to publication. I would also like to thank the Max Schmidheiny Foundation and Anne van Aaken for the opportunity to visit the University of St. Gallen as a visiting professor in the law and economics program, during the final phase of this project. I should also thank Brian Bix for having unknowingly provided an inspiration for this dictionary, before our paths brought us together as colleagues at the University of Minnesota, as well as my uncle zio Peppino for having transmitted his interest for the multifarious use of words in modern languages and for having spent timeless hours at Starbucks with me, during my early years of work on this dictionary. As often happens with undertakings of this nature, at times I questioned the wisdom of having embarked on this project. Barbara Luppi, to whom this book is dedicated, renewed my focus and helped me to find the energy and passion for this project in those moments of doubt. I am eternally grateful to her for her support in the writing of this book, and so much more.

To aid in the use of this dictionary as a teaching and learning tool for specialized sub-fields or disciplines, I have compiled an index, which contains twelve groupings of specialized terms related to the following areas:

- (1) history of law and economics;
- (2) methodology and welfare analysis;
- (3) preferences and choice;
- (4) behavioral and experimental law and economics;

- (5) law and social norms;
- (6) the Coase theorem and remedies;
- (7) economics of contracts;
- (8) economics of torts;
- (9) economics of property;
- (10) economics of crime and deterrence;
- (11) economics of lawmaking and regulation;
- (12) economics of litigation and enforcement;
- (13) monopoly and competition;
- (14) theory of market failures;
- (15) game theory concepts;
- (16) contract theory and mechanism design;
- (17) new institutional economics;
- (18) social choice and public choice theory;
- (19) auction theory;
- (20) finance and microeconomics; and
- (21) statistics and econometrics.

Students and scholars who approach these topic areas for the first time will thus have an opportunity to focus on the specialized terms that are more relevant to their literature.

This dictionary, as much as any other, should be viewed as a living document. To quote Carlo Dossi (1849–1910), “Dictionaries require constant updating, like geographical maps.” This is especially true in a growing and fast-changing field such as law and economics. The temptation to delay the publication of this volume in the interest of greater accuracy and completeness was overcome by the desire to give life to a document that might prove useful to students and practitioners in this field. My concerns regarding any omissions in this edition are assuaged by the confidence that my many friends and colleagues in law and economics will report oversights and inaccuracies, and offer suggestions to improve future editions of this book.