
AN INTERNATIONAL LEGAL SCHOLAR'S VIEW ON “IS ECONOMICS IN VIOLATION OF INTERNATIONAL LAW? REMAKING ECONOMICS AS A SOCIAL SCIENCE”

Response

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“Is Economics in Violation of International Law?” is both the title and the research question of this very ambitious work by David Lempert. The work boils down to a frontal critique of economics, the queen of social sciences, both in its mainstream i.e. neoclassical, marginalist economics and in its anthropologist's version, i.e. economic anthropology.

The critique however, rather than being carried on in its own terms takes, so to say, the perspective of a very broad legal question. The author questions economics from the point of view of international law claiming that the values and principles of international legal coexistence are at odds with those underpinning economics.

Dr. Lempert also says that because economics is an ideology rather than a science the issue of whether it is contrary to international law is politically and intellectually relevant. Indeed ideology is part of the political and institutional construction of the reality.

In the spirit of a vigorous dialogue between scholars sharing a critical agenda I will not devote time to describe the impressive wealth of erudition and knowledge in economics, law anthropology, humanities and social science displayed by the author. Readers will be able to realize from themselves that they are in front of a quite impressive accomplishment. I will rather point out at two fundamental remarks that make me think critically of the research question in general and some of its assumptions in particular.

The epistemological assumptions of Dr. Lempert's work exude positivism both in its legal and in its scientific form. The distinction between science and ideology, to begin with, is assumed as if it existed in the sky. Is there a science that is not ideology? Most recently, Fritjof Capra and I have approached the issue in *The Ecology of Law. Toward a Legal System in Tune with Nature and Community* (2015). Historical reconstruction available since Marx's discussion of the primitive accumulation show how ideological has been the scientific method of Descartes, Bacon, Galileo and Newton. “Hard” scientists now co-exist with humanists, having abandoned the tight separation between subject and object, especially because the tools of observation clearly determine what is observed. Social scientists find it hard to accept this early twentieth century epistemological revolution because the conclusion it produces is nothing less than the political acceptance of the impossibility to distinguish the *is* from the *ought to be*. The distinction between science and ideology, that between the *is* and the *ought to be*, and that between the subject and the object of observation are all legacies of mechanistic thought and scientific positivism questionable from both a phenomenological and an ecological perspective.

Lempert compares “Economics” his reified object of observation with “International Law” another reified entity. Is there such a thing as an International law “out there” to be described, ontologically different from the interpretation and the political praxis of its authors, governments, transnational corporations, non-governmental organizations or even resisting social movements? How can one say that

an idealized objectified form (economics) is contrary to another such form (international law) without considering that both are the product and the outcome of political processes?

The vision of international law that Lempert shows is moreover highly positivistic even in the more narrow meaning of legal positivism. Even lawyers lacking the impressive interdisciplinary background of the author feel that international law, among all the areas of the law, is the one most at odds with notions of legal positivism because of the lack of a centralized authority. In international law not only the subjects and the object are fused in each-other (which I claim is the case in every aspect of law) but there is no clear hierarchy of sources of law that can at least make the most narrow legal positivists hide behind a fig leaf.

Because of what I argued above, the test of international legal compatibility of economics is a suggestive metaphor to add weight to the political critique of mainstream economics that must be understood as such, outside of its claim of being based on a better scientific standard (whatever this means).

References

Capra, Fritjof, and Ugo Mattei, 2015. *The Ecology of Law: Toward a Legal System in Tune with Nature and Community*. Oakland, California: Berrett-Koehler Publishers.