

What Is Socioeconomics?

ROBERT ASHFORD*

TABLE OF CONTENTS

I.	INTRODUCTION	5
II.	A METHODOLOGY FOR USING PARADIGMS.....	7
III.	PARADIGM CONSCIOUSNESS AND NEUTRALITY	8
IV.	DISTRIBUTION COUNTS BOTH NORMATIVELY AND POSITIVELY	8
V.	WIDESPREAD APPEAL	9
VI.	A DISTINCT, CONSTITUTIONAL APPROACH.....	10

I. INTRODUCTION

To introduce socioeconomics into any law school course competently, the teacher needs to become acquainted with the definition of socioeconomics and how it relates to thinking like a lawyer. This Article provides an essential foundation.

Although the term “socioeconomics” has been used for over a century by many people in many contexts, a particular definition of socioeconomics has gained broad support among law teachers in recent years as a useful statement of its methodological principles. Accordingly, in this Article, “socioeconomics” refers to the definition set forth in the petition that established the Section on Socio-Economics of the Association of American Law Schools (AALS). With minor amendment, the definition reads as follows:

* Professor of Law, Syracuse University College of Law; J.D., Harvard University. Copyright 2004 Robert Ashford.

Drawing upon economics, sociology, political science, psychology, anthropology, biology and other social and natural sciences, philosophy, history, law, management, and other disciplines, socio-economics [1] regards competitive behavior as a subset of human behavior within a societal and natural context that both enables and constrains competition and cooperation[;] [2] [r]ather than assume that the individual pursuit of self-interest automatically or generally tends toward an optimal allocation of resources, . . . assumes that societal sources of order are necessary for people and markets to function efficiently[; and] . . . [3] seeks to advance a more encompassing interdisciplinary understanding of economic behavior open to the assumption that individual choices are shaped not only by notions of rationality [and self interest] but also by emotions, social bonds, beliefs, expectations, and a sense of morality.

Socio-economics is . . . dedicated to the empirical, reality testing approach to knowledge. It respects both inductive and deductive reasoning. But it also openly recognizes the policy relevance of teaching and research and seeks to be self-aware of its normative implications rather than maintaining the mantle of an exclusively positive science. Although it sees questions of value inextricably connected with individual and group economic choices, socio-economics does not entail a commitment to any one paradigm or ideological position, but is open to a range of thinking that treats economic behavior as involving the whole person and all facets of society within a continually evolving natural context.

Unique among interdisciplinary approaches, however, socio-economics recognizes the pervasive and powerful influence of the neoclassical paradigm on contemporary thought. Recognizing that people first adopt paradigms of thought and then perform their inductive, deductive, and empirical analyses, socio-economists seek to examine the assumptions of the neoclassical paradigm, develop a rigorous understanding of its limitations, improve upon its application, and develop alternative, perhaps complementary, approaches that are predictive, exemplary, and morally sound.¹

Implicit in this definition is an approach to economics that suspends a number of critical assumptions underlying the neoclassical paradigm, including the assumptions that (1) people behave rationally, according to the definitions of rational behavior extant in neoclassical economics (specifically the axioms of revealed preference as laid out by Paul Samuelson);² (2) people act only with self interest; (3) income distribution is in accordance with marginal productivity theory under conditions of perfect competition; (4) preferences are exogenous; (5) race, sex, and nature can be ignored or encapsulated within the market; and (6) the best starting point for economic analysis is one that considers essentially, or nearly factually accurately, the conditions necessary for perfect competition, including no barriers to market entry, perfect knowledge, zero transactions costs, and others.

However, socioeconomics does more than suspend such assumptions.

1. *What Is Socio-Economics?*, AALS SEC. ON SOCIO-ECON. NEWSL., Sept. 2003, at 3, available at <http://www.journaloflawandsocioeconomics.com> (last visited Jan. 12, 2004). See generally Robert Ashford, *Socio-Economics: What Is Its Place in Law Practice?*, 1997 WIS. L. REV. 611 (stating and explicating the definition of socioeconomics and its relation to law practice).

2. PAUL A. SAMUELSON, FOUNDATIONS OF ECONOMIC ANALYSIS 90 (1983).

Rather, socioeconomics is a positive and normative approach that aspires to present a factually rigorous, holistic understanding of economic behavior that is both paradigm-conscious³ and value-conscious,⁴ yet at the same time, largely, though not entirely, paradigm-⁵ and value-neutral.⁶

Being largely paradigm-neutral, although grounded in the scientific method, socioeconomics does not require the adoption of any particular school of economic thought. Nor does socioeconomics generally require specific conclusions regarding legal controversies, problems, or solutions. Therefore, socioeconomists may or may not agree on the comparison, critique, or employment of one or more paradigms within a particular context; but with a socioeconomic foundation, the substance of the agreements and disagreements that unite and divide them are better understood.⁷

Moreover, one need not be an economist to be a socioeconomist. Like a competent lawyer, the competent socioeconomist can competently rely on the expertise of other professionals.⁸ Therefore, people from a broad spectrum of disciplines and economic persuasions can be socioeconomists. Nevertheless, “good socioeconomics requires good economics.”⁹

II. A METHODOLOGY FOR USING PARADIGMS

Although described by some as a new paradigm, socioeconomics is more accurately understood as a principled methodology, quite consistent with legal methodology, that is well-suited to compare, critique, and employ different paradigms in particular contexts and for particular purposes.¹⁰ Thus, as defined, socioeconomics is in harmony with legal

3. THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 43–51 (2d ed. 1970) (describing the priority of paradigms).

4. Socioeconomics recognizes that values (1) are implicit in paradigms, (2) affect economic behavior, and (3) cannot, in many contexts, be reduced to a single variable.

5. Paradigm neutrality reflects a willingness to examine conflicting paradigms from a mutually agreed frame of reference, such as the extent to which particular paradigms are (1) based on reasonable, workable, testable assumptions; (2) internally consistent; and (3) useful in describing past events and predicting and influencing future events. See KUHN, *supra* note 3, at 23.

6. Ashford, *supra* note 1, at 613.

7. *Id.* at 613–14.

8. See MODEL RULES OF PROF’L CONDUCT R. 1.1 cmt. 2 (2001); *id.* R. 2.1 cmt. 4.

9. Professor Thomas D. Morgan, Remarks at the Forum on Socio-Economics: What Is Its Place in Law Teaching?, Annual Meeting of the Association of American Law Schools (1996) (audio tape on file with author).

10. Robert Ashford, *The Socio-Economic Foundation of Corporate Law and Corporate Social Responsibility*, 76 TUL. L. REV. 1187, 1195 (2002).

decisionmaking in that it requires judgment to be based on general rules applied to particular circumstances in relevant context by way of a process that is “due.” Like legal decisionmaking, socioeconomic analysis requires a proper foundation upon which to employ a particular discipline in specific contexts while disregarding alternative approaches that lead to different conclusions.

III. PARADIGM CONSCIOUSNESS AND NEUTRALITY

Because it recognizes that people first adopt paradigms of thought and then perform their inductive, deductive, and empirical analyses, socioeconomic analysis is said to be paradigm-conscious. Facts, as determined by human beings, are dependant upon evidentiary rules for determining them, that is, upon paradigms. In socioeconomic analysis, the definitions, assumptions, logic, and applicability of paradigms are not taken for granted, but are open to examination. It is in requiring a proper foundation before applying a paradigm (or a rule or statute) in context that vests socioeconomic and legal decisionmaking with a high degree of paradigm neutrality. Whether neoclassical or another school of economics, or psychology, biology, political science, or some other expertise, or one or more of the sometimes conflicting schools of thought within an expertise are useful will depend on context. Only in limited contexts will a single discipline or school of thought tell the whole story, and neither law nor socioeconomic analysis is foundationally beholden to any one discipline.

Yet the paradigm neutrality of socioeconomic analysis is subject to limitation. A commitment to logical coherence, inductive and deductive reasoning, empirical evidence, and the scientific method, as well as paradigm and value consciousness, does assume a basic approach to understanding. Nevertheless, the socioeconomic approach provides an inclusive, intellectual foundation on which a diverse array of disciplines, and schools of thought within disciplines, can contribute to understanding, and on which a broad spectrum of people can beneficially participate with mutual respect for their disparate methodologies.

IV. DISTRIBUTION COUNTS BOTH NORMATIVELY AND POSITIVELY

Notwithstanding the fact that socioeconomic analysis is largely paradigm-neutral, implicit in the socioeconomic approach is the proposition that the distribution of wealth, opportunities, and risks can matter significantly both normatively and positively. Consequently, in many important contexts, (1) distributional considerations must not be excluded from the positive aspects of economic analysis, (2) distributional issues cannot be treated as purely exogenous factors, and (3) distribution cannot be

assumed to be determined by factor marginal productivity. As in law, in socioeconomics distributional issues are inherent in the positive as well as the normative analysis. Socioeconomists agree with neoclassical economics in that prices affect distribution, but also recognize that distribution affects prices.¹¹ Therefore, there is no single well-defined goal of optimal efficiency at any point in time to guide legal decisionmaking that is independent of distribution. Also implicit in the socioeconomic approach is the recognition that wealth maximization cannot be understood entirely or even primarily in terms of marginal efficiency analysis without reference to the socioeconomic context, including social institutions, changing technology, nature, and the distribution of wealth, power, opportunities, and risks along with their effects over time. Nor can wealth maximization be understood entirely or primarily in terms of efficiency maximization.¹²

V. WIDESPREAD APPEAL

Not surprisingly, the socioeconomic approach has attracted participation from Keynesian, institutionalist, behavioralist, post-Keynesian, feminist, humanistic, ecological, social, binary, and contextual economists.¹³ All of these approaches build upon the importance of distribution to positive economic analysis and recognize the correlative inadequacy of the

11. This proposition has been put analytically in economics by Piero Sraffa. *See* PIERO SRAFFA, PRODUCTION OF COMMODITIES BY MEANS OF COMMODITIES: PRELUDE TO A CRITIQUE OF ECONOMIC THEORY 12–13 (1960). For a nonmathematical exposition of Sraffa's argument, see STEVE KEEN, DEBUNKING ECONOMICS: THE NAKED EMPEROR OF THE SOCIAL SCIENCES 129–32 (2001).

12. Ashford, *supra* note 1, at 614–15.

13. Each of these schools of thought has been presented at the annual meeting of the Section on Socio-Economics of the Association of American Law Schools from 1999 through 2004. *See generally* JOURNAL OF LAW AND SOCIO-ECONOMICS, available at <http://www.journaloflawandsocioeconomics.com> (last visited Feb. 23, 2004) (setting forth programs, presentations, and commentary offered on socioeconomics at the Annual Meeting of American Law Schools). Contextual economics represents a new approach consistent with socioeconomics. *See, e.g.*, NEVA GOODWIN ET AL., MICROECONOMICS IN CONTEXT (forthcoming 2004).

Economics is the study of the kinds of social organization by which people provide for the sustaining of life, and enhance the quality of life. The four essential economic activities are resource maintenance and the production, distribution and consumption of goods and services. Economists study how these activities are undertaken by individuals, and how their social coordination is achieved.

Id.

neoclassical paradigm as the starting point for economic analysis.¹⁴ Moreover, because it recognizes that distributional issues are a necessary aspect of positive economic analysis, socioeconomics has also attracted a growing number of law professors committed to the “inclusion of socio-economic analysis in law teaching by way of (1) courses in law and socio-economics, (2) enriched courses in law and economics, and (3) socio-economic segments in other courses.”¹⁵ The articles in this Symposium are an important manifestation of the growing dedication of law teachers to socioeconomics.

VI. A DISTINCT, CONSTITUTIONAL APPROACH

Although accurately perceived as a positive and normative response to the “law and neoclassical economics” approach that widely passes for “law and economics,” socioeconomics is that and more. The United States was founded on the assumption that a constitution that advances basic rules and values can effect a change in the way people who respect it behave. The definition socioeconomics sets forth is a specific foundational approach to rules of intellectual rigor, honesty, and fair play related to economic issues. Therefore, the definition of socioeconomics offers a constitution that can provide the foundation for a school of thought distinct not only from law and economics, but also from legal realism, critical legal studies, critical race theory, feminism, postmodernism, and communitarianism.¹⁶

14. Although socioeconomics owes a substantial debt to scholars already identified with well-established disciplines and schools of thought, it is more than a new label for one or more preexisting disciplines. It is a synergistic response to the *cumulative* understanding derived during the twentieth century from social and economic events and developments in a world where many problems simultaneously seem to require complexity, depth, and breadth to comprehend and solve.

15. *Socio-Economics, Peace and Justice: Program Overview*, AALS SEC. ON SOCIO-ECON. NEWSL., Sept. 2003, at 1, available at <http://www.journaloflawandsocioeconomics.com>.

16. Despite their historical connection and some similarities, socioeconomics should not be confused with communitarianism. See Richard M. Coughlin, *Whose Morality? Which Community? What Interests? Socio-Economic and Communitarian Perspectives*, 25 J. SOCIO-ECON. 135, 135–36 (1996) (pointing out that there are critical differences between communitarianism and socioeconomics and that any perception that they are the same is misleading).