

Models in Social Science:
A Review of Law and Public Policy:
A Socioeconomic Approach
by Lynne L. Dallas

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Academics do not discuss the purpose of social science modeling enough. The purpose is not to reaffirm or sanctify a certain set of assumptions or preconceptions about the world. Social science models are not a religion or even “the truth”; they are merely a tool by which we hope to extend our understanding and predictive powers over certain problems and perhaps derive a solution. At its heart, the purpose of social science modeling is to clarify people’s understanding of a social problem.¹

Simplicity is a virtue in modeling, even though it is not the ultimate objective. All modeling is necessarily an abstraction from reality that allows us to gain greater insight into a problem by focusing our attention on the variables that are of most importance to the phenomenon. However, models can be too simple. In determining whether a model is simple enough or too simple, the ultimate arbiter is whether the model increases our understanding of the phenomenon without missing some essential feature of the problem. The art of social science modeling is in discerning which simplifying assumptions one can make to clarify an

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1. Kenneth G. Dau-Schmidt, *Relaxing Traditional Economic Assumptions and Values: Toward a New Multidisciplinary Discourse on Law*, 42 SYRACUSE L. REV. 181 (1991).

examined problem, but still preserve its essential features.²

In social science modeling, perhaps no set of assumptions has received more attention, or more work, than the neoclassical economic model. For the greater part of the last century, economists have focused almost exclusively, and sometimes with almost religious fervor, on applying the criteria of Pareto optimality and wealth maximization to analyses based on the neoclassical assumptions of individual rational maximization, exogenous preferences, zero transaction costs, and perfect information.³ Economists have focused on the neoclassical model because it is simple, producing mathematically tractable formula, and because it has produced some very useful insights into a wide variety of market phenomena. The Pareto optimality and wealth maximization criteria have been used because they avoid the knotty issue of distributional fairness, an issue on which economists feel they have little to contribute. If you want a model to understand the changes in the price of peanuts, and you are not too concerned about who gets to eat the peanuts or whether the production of peanuts is morally sound, you cannot do much better than the traditional neoclassical model of supply and demand evaluated under the Pareto optimality and wealth maximization criteria.

However, the neoclassical economic model and its associated evaluative criteria have been applied well beyond simple explanations and evaluations of the price of peanuts. Gary Becker has applied them to education, the family, discrimination, and crime.⁴ Richard Posner has applied them to almost every conceivable legal problem from antitrust to his infamous treatment of the problem of adoption.⁵ These applications are not ill-intended or evil. Indeed, they have yielded many useful insights into the examined problems. Nevertheless, it is quite natural, and indeed our duty as social scientists, to ask whether the application of the simple neoclassical model adequately captures the essence of all of the examined problems, or whether a new economic analysis with different assumptions based in part on work from other disciplines such as sociology and cognitive psychology would yield a superior analysis of at least some of these phenomena. Moreover, if the analysis is going to be used as a normative evaluation of what the law should be in order

2. *Id.*

3. Kenneth G. Dau-Schmidt, *Economics and Sociology: The Prospects for an Interdisciplinary Discourse on Law*, 1997 WIS. L. REV. 389, 395–97.

4. *See generally* GARY S. BECKER, HUMAN CAPITAL (2d ed. 1975); GARY S. BECKER, THE ECONOMIC APPROACH TO HUMAN BEHAVIOR (1976); GARY S. BECKER, THE ECONOMICS OF DISCRIMINATION (2d ed. 1971); Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169 (1968).

5. *See generally* RICHARD A. POSNER, ANTITRUST LAW: AN ECONOMIC PERSPECTIVE (1976); RICHARD POSNER, ECONOMIC ANALYSIS OF LAW 155–56 (6th ed. 2003).

to make public policy more “efficient” or to maximize wealth, as such analyses inevitably are, then it is incumbent on us as social scientists to ask whether the criteria of Pareto optimality and wealth maximization adequately capture all of the relevant moral questions in the examined problem, or whether there are additional values to be considered in making public policy.

These are the important questions Professor Lynne Dallas asks, and answers, in her important new book *Law and Public Policy: A Socioeconomic Approach*.⁶ In this book Professor Dallas uses edited excerpts of articles and original connective explanatory text to present the neoclassical economic model, the socioeconomic critique, and proposals for new models and evaluative criteria that draw on insights from other disciplines and perspectives such as sociology, cognitive psychology, philosophy, and feminist economics. The book presents general discussions of “law and socioeconomics,” “law and cognitive psychology,” “economic fairness and well-being,” “legal socialization and norms,” and “cooperation and the law.” It also presents extensive examination of the application of these basic principles to the particular problems of discrimination, adoption, surrogate motherhood, family law, corporate law, and international law. The book is intended as the primary resource for a class or seminar on law and socioeconomics, or as a supplementary text for courses on law and economics, discrimination law, family law, corporate law, or international law.

Given the fundamental nature of Dallas’s work, it is not surprising that she examines some very interesting and important issues during the course of her presentation. In Chapters Two and Four, she examines the context of individual behavior, contrasting the neoclassical model’s assumption of individual rational self-interest with the work of Geoffrey Hodgson⁷ to account for non-self-interested decisions and group dynamics by placing economic decisionmaking in a social and political context. Professor Dallas also gives a full exposition of the “new school” of law and behavioral economics espoused by Russell Korobkin and Thomas Ulen,⁸ including explanations and examples of the “contextual”

6. LYNNE L. DALLAS, *LAW AND PUBLIC POLICY: A SOCIOECONOMIC APPROACH* (forthcoming 2004).

7. GEOFFREY M. HODGSON, *ECONOMICS AND INSTITUTIONS: A MANIFESTO FOR A MODERN INSTITUTIONAL ECONOMICS* (1987).

8. See Russell B. Korobkin & Thomas S. Ulen, *Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics*, 88 CAL. L. REV. 1051 (2000); see also Christine Jolls et al., *A Behavioral Approach to Law and Economics*, 50

phenomena of “framing effects,” “endowment effects,” “anchoring,” and “preference reversals.” In Chapters Four, Five, and Nine, Professor Dallas explores the process of socialization, and the role of norms and the law in that process, by comparing the neoclassical model’s assumption of exogenous preferences with the work of John Stolte,⁹ Ellen Cohen, Susan White,¹⁰ and even myself,¹¹ examining the endogenous relationship in which people’s preferences are shaped by other people and the law, and in turn how they have an impact on the rules governing society. Dallas’s interweaving of the psychology literature on development and the economic literature in this area goes beyond a mere text book exposition on the subject to constitute a novel contribution to the literature. Finally, in Chapters Three and Four, Professor Dallas directly addresses the issue of “fairness” in distribution and procedure, examining the conclusions of the traditional economic model of individual rationality and the criteria of Pareto optimality and wealth maximization in light of the empirical work of Daniel Kahneman, Jack Knitsch, Richard Thaler, and others,¹² suggesting that perceived fairness has a very real impact on the actions of people. The express consideration of these important topics in a text on the economic analysis of law is both useful and refreshing.¹³

Professor Dallas’s book seems a timely contribution to a larger movement towards a multidisciplinary discourse on the law. Interdisciplinary exchanges can be very valuable, but need the right overlap of examined questions and methodology between the disciplines to occur and be profitable.¹⁴ Although pure transplants of methodology from one discipline to another have occurred and have been useful,¹⁵ it is much more likely that scholars will see the implications of work from other disciplines for their

STAN. L. REV. 1471 (1998).

9. John F. Stolte, *Internalization: A Bargaining Network Approach*, 8 J. THEORY SOC. BEHAV. 297 (1978).

10. ELLEN S. COHN & SUSAN O. WHITE, *LEGAL SOCIALIZATION: A STUDY OF NORMS AND RULES* (1990).

11. Kenneth G. Dau-Schmidt, *The Economic Analysis of the Criminal Law as a Preference-Shaping Policy*, 1990 DUKE L.J. 1.

12. Daniel Kahneman et al., *Fairness as a Constraint on Profit Seeking: Entitlements in the Market*, 76 AM. ECON. REV. 728 (1985); see also TOM R. TYLER ET AL., *SOCIAL JUSTICE IN A DIVERSE SOCIETY* (1997).

13. Perhaps the only criticism of Dallas’s work I would make is that it is so ambitious in the number of questions and issues it examines that some students may find it daunting. However, this problem can be overcome by the faculty who decide to use this book through their careful selection among the many materials presented by Dallas and their direction of the students in their readings and class discussions.

14. Dau-Schmidt, *supra* note 3, at 405.

15. For example, consider the importation of deductive scientific method and math from the hard sciences to economics during the last century. *Id.*

own work if they are examining the same or similar problems as scholars in the other discipline. Accordingly, some overlap in examined questions and methodology is desirable in order to promote interdisciplinary discourse. However, if there is too much overlap, then the multiple disciplinary perspectives become redundant and no new insights can be gained from the exchange. An academic monoculture is a very poor environment in which to examine social problems, and is probably not even possible given the physically different ways in which people's brains approach problems.¹⁶

Although economics spent the better part of the twentieth century evolving in relative isolation from the other disciplines, in the 1960s there began a significant coalescence among the disciplines with respect to examined questions and methodology. The work of Gary Becker and Richard Posner in applying the neoclassical model to subjects such as discrimination, the family, and the law,¹⁷ which were traditionally the province of other disciplines, opened the way for later generations of economists to examine these and other questions from a less rigid economic perspective, borrowing from the work of disciplines already examining these problems. Similarly, some sociologists and political scientists have begun to consider the implications of rational choice theory borrowed from economics.¹⁸

This coalescence in examined subject matter and methodology among the disciplines in the study of subjects such as the law has led to increased interest in multidisciplinary analysis. In 1997, the Association of American Law Schools added a section on Law and Socioeconomics which has proven popular enough to successfully undertake full-day programs for the last seven years. At the 2002 annual meeting of the American Law and Economics Association, Robert Ellickson, a scholar who has long mixed economic, sociological, and psychological concepts in his own scholarly work,¹⁹ not only presided as president of the association, but also delivered a presidential address that called for greater discourse among the disciplines in the study of law.²⁰ Most

16. Jeffrey Wasserstrom, *Why I Believe It's Time to Devise New Ways of Categorising Modern Scholars*, TIMES HIGHER EDUC. SUPPLEMENT (London), Aug. 15, 2003, at 14.

17. See *supra* notes 4–5.

18. Dau-Schmidt, *supra* note 3, at 404; see, e.g., JAMES S. COLEMAN, *INDIVIDUAL INTERESTS AND COLLECTIVE ACTION* (1986).

19. See, e.g., Robert C. Ellickson, *Bringing Culture and Human Frailty to Rational Actors: A Critique of Classical Law and Economics*, 65 CHI.-KENT L. REV. 23 (1989).

recently, at the 2003 annual meeting of the Law and Society Association, Lauren Edelman, a sociologist by training, gave a presidential address very similar to Ellickson's in its enthusiasm for a multidisciplinary discourse on law and, in fact, focused at length on some of the issues of endogeneity among law, society, and individual preferences that are examined in Professor Dallas's book.²¹ As a result, scholarship that looks at legal problems from a behavioral economics perspective or a socioeconomic perspective is flourishing.

Of course, the academic mission is not only the production of new knowledge but also its dissemination. It is incumbent on the academy, not only to familiarize themselves with work in this new multidisciplinary discourse, but also to convey the insights of this work to the next generation of lawyers through our teaching. Professor Dallas's book, *Law and Public Policy: A Socioeconomic Approach*, pulls together a wide array of this exciting new scholarship and is an excellent medium for introducing this work to the legal academy and the next generation of lawyers. I highly recommend its consideration for classes or seminars in law and economics or law and socioeconomics.

20. Robert C. Ellickson, *The Market for Social Norms*, 3 AM. L. & ECON. REV. 1 (2001).

21. Lauren Edelman, *Rivers of Law and Contested Terrain: A Law and Society Approach to Economic Rationality*, LAW & SOC'Y REV. (forthcoming 2004).