Although several scholars have shown an interest in this approach, at the present time there is no law and economics movement in Switzerland. However, the economic consequences of law may be taken into account when new legislation is drafted. Moreover, it is quite possible, especially under the influence of scholars who have studied in the US during the past decade, that a law and economics movement will begin to develop within the next decade.

1. THE STATUS OF THE LAW AND ECONOMICS MOVEMENT

That no such movement actually exists should not mislead the reader into thinking that the analysis of the economic consequences of regulation is an unknown phenomenon or that the law and economics approach has not yet reached Switzerland. There are two (traditional) areas where the economic consequences of legal rules are debated by scholars, either directly or through the analysis of the legality of the structure of an industry or of entrepreneurs' behavior.

(1) Statutes providing for administrative supervision of a sector of the economy or of a specific category of entrepreneurs are not enacted or implemented without an (often heated) discussion of their economic consequences. There are various schools of thought regarding the extent to which administrative supervision should exist. For some authors, of course, the state should intervene as little as possible, whereas for others, state intervention is not the greatest evil. One may also distinguish between instrumentalisists, for whom competition is only an instrument for the well-being of society, and institutionalists, for whom economic freedom is essential, or between those who see the federal Constitution as protecting competition directly or only negatively. Hence, there is quite a rich body of general literature in this field. Nevertheless, although some authors are at ease with


4 RS 101.


economics, an explicit economic analysis of regulation is rare. There are also some publications (normatively law review articles) dealing with specific areas of economic regulation; here again, an explicit economic analysis is the exception, although one can find such analysis in contributions on, for example, exchange rates, housing, or economic activities that are energy consuming.

(2) Antitrust and unfair competition is the second area in which there has always been some sort of economic analysis of the law. This is very obvious in the case of the Federal law on cartels and similar organizations (Cartel Act), which should come as no surprise, as the Cartel Act provides for an administrative supervision of entrepreneurs. Such an approach, however, has also been used for the part of the Cartel Act that is not enforced through an administrative body (the private law section) and for the Federal law against unfair competition (Unfair Competition Act), which only grants private parties actions. There are even some articles explicitly referring to the law and economics approach; in a recently published paper, one of the leading Swiss scholars, Walter Schlappe, has gone one step further, dedicating it entirely to the economic analysis of traditions.

Vol. I (Bern: Stämpfli, 1989); Rheinu. (supra note 5); see also Leo Schärmer, Wirtschaftsverwaltungrecht, 2 ed. (Bern: Stämpfli, 1983).

See, for example, Walter R. Schlappe, Zum Wirtschaftsrecht (Bern: Stämpfli, 1978).


RS 251.


RS 241.


See Walter R. Schlappe, "Anmerkungen zur ökonomischen Analyse des Markenrechts,"

Recently, the analysis of the economics of complex legal rules or even the law and economics approach has influenced contributions outside the traditional areas of administrative supervision of the economy and competition law. Such an evolution is mainly due to those Swiss scholars who have taken courses in law and economics during their postgraduate studies in the US. Three other factors should also be mentioned. One is the growing importance of the "functional analysis" school. According to this doctrine, the law has to be applied in compliance with its "function," notably its economic function. Another is the influence and publication in Switzerland of the works of German authors—Germany being a country that has always been an important model for Swiss scholars' thinking. Finally, the growing role of environmental issues has the almost inevitable consequence of the encouraging economic analysis of the law.

Hence, the contributions focusing on the economic consequences of regulation have recently been published in Switzerland in the areas of enforcement of private law, general terms and conditions, consumer protection, contract law, torts, corporate and capital market laws, insurance, and even international in: Festschrift zum 65. Geburtstag von Mario M. Pedrazzini (Bern: Stämpfli, 1990), pp. 715-735.

Schlappe and Baudenbacher are among the main proponents of the "functional movement" in Switzerland. This school is also being criticized: see Herbert Wohlmuth, "Zur funktionalen Auslegung im Kartellrecht," in: Freiheit und Verantwortung im Recht, Festschrift zum 60. Geburtstag von Arthur Meier-Hayoz (Bern: Stämpfli, 1982), pp. 461-473.


See Association internationale pour l'étude de l'économie de l'assurance, Law and Eco-
private law. Nevertheless, one cannot claim that there is a law and economics movement in Switzerland. Most of the contributions do not refer to the law and economics approach, and the analysis of the economic consequences is at times very ancillary. On the other hand, the law and economics approach no longer has to face the hostility it encountered a decade ago. For example, articles are being published whose purpose is to make Swiss lawyers familiar with the law and economics approach. Very recently, there was even a law journal that openly proclaimed its law and economics content, although one should not overlook the fact that the review Wirtschaft und Recht, Switzerland’s most respected journal in the field of the analysis of regulations affecting the economy, has been publishing articles by lawyers and economists for decades. Thus, while there is at present no law and economics movement worth mentioning, the seeds of such a movement are there.

II. THE RECESSION OF THE LAW AND ECONOMICS MOVEMENT

As there is no law and economics movement, it is to be expected that no law in Switzerland has been affected by it; neither should there be any cases, parliamentary debate, or regulator influenced by it.

This conclusion is correct for the area that is described as common law or case law in the United States. It has to be tempered for the public regulation of the market area.

As mentioned, statutes providing for administrative supervision of a sector of the economy or of a specific category of entrepreneurs are not enacted without a discussion of their economic consequences. Such discussions are obviously not only the work of academics. They pervade the legislative process and affect the reasoning of judges and regulators. However, these discussions, in general, do not really reflect a thorough economic analysis. It is normally an ideological debate, where participants often resort to the use of “intuitive” economics to sustain their conclusions. Hence, this cannot qualify as fulfilling the standards of a law and economics approach.

Three examples may be provided. (1) Basically, intervention of the state (at the federal or cantonal level) in the economy is, under current legal thinking, administered by Professional Liability Insurance, The Geneva Papers on Risk and Insurance, vol. 14 (1989) and vol. 15 (1990); note that the papers published in those two issues are from foreign scholars.

"See Anton K. Schneider, Wirtschaftskollisionsrecht (Zürich: Schulthess, 1990), especially pp. 32ff.


"Unfortunately, Wirtschaft und Recht, notably due to too small a circulation, ceased publication at the end of 1990.

sible only if it respects the conditions set for not infringing the citizens’ “freedom of trade and industry,” guaranteed by article 31 of the federal Constitution.

The analysis of case law, regulatory jurisprudence, or statements made by the various administrations shows that such intervention is relatively easy to justify for measures adopted to police the economy or for measures reflecting social policies. It is much harder to justify for measures reflecting economic policy concerns. On the face of it, this should mean that economic analysis is of importance whenever a statute is being adopted, a case judged, or a decision pronounced. Unfortunately, this need not be so. The categories mentioned are defined in ways that have nothing to do with an economic analysis; for example, measures the purpose of which is to provide for “the well-being of all or most citizens or to increase such well-being by improving the conditions of life, health or spare time” are considered to reflect social and not economic policies. This is certainly a more than questionable definition under a law and economics approach, and it should come as no surprise that its use by judges or regulators results in economically strange decisions.

(2) Moreover, state subsidies, an important form of state intervention in the economy, are not even subjected to such scrutiny, on the grounds that they do not restrict the economic freedom of entrepreneurs. This is an amazing conclusion for an economist, but a very understandable one for a politician. Indeed, it permits the preservation of cantonal autonomy and federalist concerns: submitting state aid to a scrutiny versus the “freedom of trade and industry” would mean the end of cantonal aid, because it would have to be qualified as a restriction, reflecting economic policy purposes, a restriction that cantons are not allowed to impose.

(3) The new federal law on the supervision of prices (Price Supervision Act)97 had to be adopted following the surprising success of consumer groups that managed to get the federal Constitution amended by a new article, 362a, which creates an obligation to adopt an administrative price supervision scheme at the federal level. Economists had had little to say on the principle of such legislation. Moreover, although “abusive” prices are those that do not reflect “efficient competition” (“concorrenziale efficienza,” “wirksamer Wettbewerb”),98


98See, e.g., Sieber (supra note 8), p. 450.


101RS 942.20.

102Consumer groups especially were relying on the positive experiences made under a temporary price supervision statute: see Surveillance des prix 1973–1978, Rapport du Projet à la surveillance des prix. (Bern: OCAMIBE, 1979).

103On that topic, see Paul Richeli, “Zum Gesetzgebungsaufrger für die Preisüberwachung,” Zeitschrift für schwizerisches Recht 1983: 2–70.

there is strong pressure for applying the law in a manner reflecting political rather than economic concerns—the Federal Council (the Swiss government) having made sure of that by designating a former politician as "Price Supervisor." These three examples are not meant to imply that economic analysis plays no role whenever a statute is drafted or that Parliament does not take economic consequences into account. The point is rather that, whenever the state regulates the economy (which at the federal level it often does directly), it is very difficult to separate economic and political aspects and that the impact of the former is all but obvious. Admittedly, this may be true anywhere, however, notably because of the emphasis in Switzerland on reaching a broad consensus before enacting new regulations, the impact of economic analysis is here even more difficult to perceive.

Economics play a more important role in the competition law area. (1) The Cartel Act had originally been drafted on the basis of proposals made by economists. Since the setting up of the Cartel Commission, the best-known commissioners have been economists or lawyers well trained in economics; moreover, the "balancing test" used by the Cartel Commission was conceived by an economist.

It is true that, for years, the business community managed to avoid economic reasoning playing a decisive part in the recommendations of the Cartel Commission. However, the new Cartel Act emphasizes the importance of "efficient competition" ("Wirtschaftlicher Wettbewerb") and, although it does not provide for an effective merger control device,

"See Paul Richli, "Erste Eindrücke von der Praxis zum Preisüberwachungsgesetz," Wirtschaft und Recht 41 (1989):191-209, although the "Price Supervisor" seems to have been willing to put emphasis on the competition side of its task, the published reports regarding its activities do not provide enough data to evaluate its interventions. The recent controversy about applying the Price Supervision Act to mortgage rates is also a good example of politics mixing with economics concerns; on that topic, see, e.g., Ernst Baltenberger, "Hypothekarzinsüberwachung ante portas?" Neue Zürcher Zeitung, Sept. 19, 1990, No 217, p. 35.


"Willy Linde, "Verteilung Gründlagen der Wettbewerbspolitik?" Neue Zürcher Zeitung, Jue 9/10, 1990, No 131, p. 34.

"See Marcelle (supra note 13) and Les cartels et la concurrence en Suisse, 3e Publication de la Commission d'étude des prix du Département fédéral de l'économie publique (Bern: OCFTM, 1957).


it is flexible enough to permit the use of almost any new economic theories. Hence, the Cartel Commission is giving more weight to the microeconomic impact of cartels and is less willing to tolerate the reduction of competition on "social" grounds.

The exact role and accuracy of economic analysis under the Cartel Act remain to be seen. Indeed, there is currently a lively debate on the importance of economic considerations when applying the 1985 Cartel Act. There is also a heated discussion about the validity and up-to-dateness of the Cartel Commission's economic reasoning.

Obviously, such debates are not devoid of economic policy, social, and political concerns. Therefore, their eventual outcome is unclear. Especially considering pressures to adjust to the rules enacted at the European Community (EC) level, one might think that microeconomic considerations will play an increased role; indeed, the Cartel Commission already pays attention to EC rules whenever adopting recommendations.

(2) The Unfair Competition Act of 1988 was drafted by a member of the "functional school." Hence, it was intended to be applied with attention being given to economic rather than "good faith" considerations. However, Parliament has watered down some of the provisions, notably the one on general terms and conditions. Moreover, a review of current literature shows a movement against "functionally" implementing the act. Therefore, although the legislative prerequisites for a law and economics implementation of the act are at least partially fulfilled, it must be noted that there is no case that can be mentioned that embodies such an approach—nor should we expect one in the near future, given the lack of
knowledge in economics demonstrated by the judges who apply the Unfair Competition Act.

As already emphasized, the law and economics approach plays no role whenever a statute is drafted or revised in the common law or general private law area. For example, it was not even considered during the recent modifications of regulations concerning rental agreements or corporations. The same conclusion can be drawn for case law.

III. FUTURE PROSPECTS

It is not expected that the law and economics approach will play an important role in Switzerland in the near future.56

There are three main reasons for such a pessimistic assessment. One is that judges, regulators, and even lawyers at large are ill at ease with economics. The second is the consultative way in which statutes are drafted and weight given to mere political considerations. The third is that Swiss law schools do not offer any full law and economics courses, which is a prerequisite for any development of the approach—although it has to be pointed out that (1) lectures on law and economics are being incorporated as part of courses on economic legislation (especially at the Universities of St. Gallen and Geneva law schools) and (2) postgraduate students at Swiss universities are increasingly beginning to pay attention to this approach (Michael Adams’s law and economics “Habilitationsschrift”7 remaining, however, an isolated event). This is why those interested in law and economics are primarily trying to inform lawyers and, hopefully thereafter, politicians about the purpose and impact of such an approach, e.g., by systematically integrating a law and economics paper whenever organizing a conference on a specific topic.55

It is nevertheless possible that a law and economics movement will develop earlier than anticipated due to the current willingness to conform Swiss law as much as possible to EC law. Indeed, any law and economics impetus at the EC level is likely to affect Swiss regulations: its impact on EC rules will have to be taken into account, or even straightly copied, at the Swiss level—which, indirectly, will help the emergence of a Swiss law and economics movement.


57See supra note 24.

58See, e.g., Colloque, Les prises de participations: L’exemple de la concurrence d’achat, Centre d’études juridiques européennes (Lausanne: Payot, 1990) and Colloque, Problèmes actuels de la responsabilité civile, Centre d’études juridiques européennes (Zurich: Schultness, 1991).

ON INTERNATIONAL REVIEW OF LAW AND ECONOMICS (1991), 11(301-308)

LAW AND ECONOMICS IN JAPAN:
HATCHING STAGE

SHOZO OTA

School of Law, University of Tokyo, 7-3-1 Hongo, Bunkyo, Tokyo 113, Japan

1. CHARACTERISTICS OF JAPANESE JURISPRUDENCE

The legal scholarship of Japan has unique characteristics that are derived from the historical development of the modern Japanese legal system. Law and economics scholarship in Japan is influenced by the characteristics of legal scholarship.

It is only a little more than one hundred years since Japan abolished its feudalistic social system and began transplanting modern legal, economic, and political systems. Japan has been introducing a Western-style legal system and legal theories since Meiji (Meiji Restoration) in 1867. There was a reason why Japanese government at that time was so eager to introduce a Western-style legal system. Before the Meiji Restoration, Japan was forced to enter into unequal treaties with Western countries because of overwhelming Western military power. According to these treaties, for example, Japanese courts had no civil or criminal jurisdiction over Western people living in Japan. The European countries claimed that it was because Japan had no civilized legal system. The Japanese government made every effort to transplant a Western-style legal system in order to revise the unequal treaties.

The Japanese government had to establish de novo universities, a court system, a police system, and so on. The government had to enact all sorts of laws from practically nothing, e.g., there were no notions such as right and duty before the Meiji Restoration. In the first ten years after the Meiji Restoration, the influence of French law was predominant, e.g., Gustave Boissonade, among others, was invited to draft the old civil code and the criminal code. Therefore, German influence was overwhelming until World War II. After the war, the influence from the USA has become greater and greater. As a result, the Japanese legal system is a mosaic of laws of different origins, e.g., the Japanese civil code derived mainly from France with substantial modification under German influence; the Constitution, corporate reorganization law, and criminal procedure from the USA; commercial law, bankruptcy law, criminal law, civil procedure, and administrative law from Germany.5

5The legal notions in Japan such as saibansho (court), kenji (prosecutor), saibankan (judge), kenji (right), gimu (duty), and bengoshi (lawyer) are all translations of Western notions.

6The French influence in the civil code survived the German impact.

7For example, the old code of civil procedure was almost the literal translation of the code of German civil procedure at that time. The old code was revised in 1925, but the fundamental structure has been maintained.

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THE EUROPEAN COMMUNITY

GÉRARD HERTIG
University of Geneva Law School, Bd. des Philosophes, 12,
CH-1205, Geneva, Switzerland

There is at the present time no clearly established European Community (EC) law and economics movement. However, the interest economists have for customs unions1 and economic integration,2 the growing importance of EC law,3 and the fact that it increasingly affects member states' law (especially where directly applicable),4 make it worthwhile to investigate the prospects for law and economics at the EC level.5 Besides economic policies, the EC is pursuing social issues, the European of citizens, and political integration. However, we will focus here on economic integration, because it is still the major aim of the EC, and it is the area most likely to provide some data useful to assess the prospects for such a movement.

European economic integration is being achieved through the completion of the "internal market," which means undistorted freedom of movement within the EC for goods, services, money, and economic agents. However, economic integration cannot be achieved only through the elimination of obstacles (negative integra-

2See, e.g., David G. Mayes, "The Effect of Economic Integration on Trade," in: The European Internal Market (supra note 1), pp. 97-121.
5The EC level is here defined as the level of EC law: Treaties, directives, regulations, recommendations—hereafter "regulations." Such a definition is admittedly somewhat artificial: EC law and economics could also be understood as incorporating comparative economic analysis of member states' regulations or, at least, of member states' statutes that implement EC regulations. However, a narrow definition seems preferable, as it provides an aggregate picture of the law and economics movement in the EC; on the relationship between an EC law and economics movement and member states' law and economics movements, see below.

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develop a theory of harmonization. One will also barely find references to a law and economics approach or to economic analyses at the European Parliament level or in the European Court of Justice case law.

Yet the European Commission has shown to be quite receptive to economic theories and to taking into account economic consequences of proposed institutions or regulations. For example, Jacques Delors, president of the European Commission, has given speeches in which he expressly refers, quoting American scholars, to the spillover theory (externalities imply that harmonization cannot occur without harmonization) and to its necessary counterpart, the principle of subsidiarity (EC interventions are called for only when they are more efficient than member states' interventions), as well as to the theories of public choice and games. Community civil servants point out that economic analysis does have something to offer to those who have to decide whether any particular activity needs to be regulated and how it is to be regulated, or whether a subject should be regulated at the EC or state level: economic analysis is considered useful in illuminating the types of costs and benefits that should enter into the calculus, especially the Schiavo study of economic theory of integration, the theory of public choice, the theory of pure public goods, and the theory of externalities.

This willingness to tackle complex economic theories results from two factors. One is the role played by commissioners and civil servants who are either economists or familiar with economics; indeed, this role may be greater than in a given member state administration because the Treaty of Rome aims at efficiency gains. The other is the necessity to convince member states that the loss of national sovereignty resulting from EC interventions is economically beneficial.

However, there is an ambiguity that makes it difficult to evaluate the prospects for an EC law and economics movement. To get a better understanding, it is useful to undertake a three-stage analysis: (1) Point out factors that are obstacles to the development of such a movement; (2) Point out factors that mitigate such obstacles; and (3) Define the areas where the law and economics approach can be expected to develop.

The Obstacles

There are at least three factors that we believe are obstacles to the development of a law and economics movement at the EC level.


See Committee for the Study of Economic and Monetary Union (Delors Committee), Report on Economic and Monetary Union in the European Community (Brussels: Commission of the European Community, 1989), which established the subsidiary principle as one of the fundamental guiding principles of the next reform. The principle has now a broad political support: see, e.g., the European Parliament's Resolution on the Principle of Subsidarity, O.J. No. C 231/163, Sept. 19, 1990.

Flitcroft (supra note 9) at 1-2.

THE MITIGATING FACTORS

There are at least three factors that mitigate these obstacles. First, although the EC may have limited powers in some areas that have traditionally been discussed by law and economics scholars, it has clear legislative powers in other areas, for example, in the field of corporate law and capital market law. Moreover, it has recently undertaken to adopt directives in the areas of torts and contract law. Hence, standard materials for a law and economics approach exist.

Second, political constraints are not an EC characteristic and have never proven by themselves to be sufficient to demand scholars from starting a law and economics analysis. Political constraints could even be a factor favoring the development of a law and economics movement since it is necessary to convince member states of the efficiency of EC interventions, although the studies undertaken on behalf of the EC or published by it have until now emphasized macroeconomic aspects.

Finally, there are within the EC well-trained economists who are, especially because of the just mentioned political factor, able and willing to take into account a law and economics analysis.

THE PROSPECTS

It seems that these mitigating factors sufficiently balance the above mentioned obstacles to conclude that there are no insuperable obstacles to the development of an EC law and economics movement. Nevertheless, there is today no such movement. Therefore, it seems to us that we will have to wait for law and economics movements to establish themselves in a majority of member states before witnessing the spreading of a true EC law and economics movement; in other words, the EC movement will further develop from below rather than from above.

Admittedly, a rapid horizontal, and consequently vertical, spillover effect is hampered by still existing national barriers, that is, the lack of international competition among European universities, which makes it possible not to follow the trend set by those already offering law and economics lectures or programs; the legal and factual obstacles to the mobility of lawyers, which prevent those who use the approach from spreading it to other countries; the insufficiency of some EC countries (especially France) that still have their national culture, which resists in excessive caution toward an approach originated in a foreign/common law country. However, these obstacles will gradually disappear, and we shall certainly witness the above mentioned vertical spillover effect. In addition, analyses of members states' statutes implementing EC regulations in countries where a national movement is well established should lead to direct law and economics analyses of EC law.


See below.

This is why the few existing law and economics analyses of EC regulations are mostly done by German authors, Germany being the country where the law and economics movement is the strongest; see, e.g., Peter Behrens, Die Ökonomischen Grundlagen des Rechts (Tübingen: J.C.B. Mohr, 1986); Hans-Jürgen Schäfer and Claus Off, Lehrbuch der Ökonomischen Analyse des Zivilrechts (Berlin: Springer, 1986).


Obviously, the absence of an established EC law and economics movement does not mean that the analysis of the economic consequences of regulations is an unknown phenomenon or that the law and economics approach has not yet reached the EC. Indeed, the general interest of economists for customs unions and economic integration and their specific interest in EC economic policy and its implementation should make it a foregone conclusion that, directly or indirectly, some economic analysis of EC law (Treaty of Rome, directives, etc.) exists.

However, most of the economic analyses center on the macroeconomics of integration. Hence, there are numerous studies on monetary policy or on tax harmonization. There are also quite a number of contributions by economists that, at least indirectly, concern the legal aspects of common EC policies, like agriculture, trade policies, or regional policies. While these are not what is commonly known as contributions in law and economics, they may have a direct impact on the drafting of legal provisions that affect the wording of amendments to the Treaty of Rome and pave the way for further research on the economic consequences of regulations.

That most studies center on the macroeconomics of integration does not mean

that the microeconomics of integration has not been discussed. Strangely enough, the original impetus for such an approach to the completion of the internal market may have come from the EC Court of Justice. The court made it very early on that the EC is characterized by three elements: the elimination of barriers to free movement, fair competition, and unity of the market. But in its landmark decision Cassis de Dijon, the court stated for the first time that the institutional arrangement of a member state of origin is to be mutually recognized. That was the basis for the White Paper's new approach, according to which member states have to presume that products or services originating from another member state comply with their own standards of mutual recognition, provided that essential requirements have been set at the EC level. This evolution, which has altered the integration process from ex-ante harmonization to a more market-oriented approach, had an impact on the development of economic analysis of EC regulations. It led the EC to commission studies on the benefits of the new approach and to encourage scholars to research its economics. To better assess the importance of that phenomenon and the extent to which it will help the development of an EC law and economics movement, it is useful to: (i) consider microeconomic analyses sponsored by the EC Commission; (ii) investigate whether EC regulations that imply administrative supervision have lately been the object of economic analysis; (iii) study whether the economics of competition law are as closely focused upon as elsewhere.

(i) The EC Commission recently produced or commissioned quite a number of studies on the economics of integrated and related regulations. Brussels civil servants are even instructed to include a section on the economic costs and benefits in proposals for draft regulation. Some of those studies come close to what a law and economics scholar would produce. Others are closer to politics than economics; this may be particularly true for the just mentioned sections on the economic costs and benefits of draft regulations. Nevertheless, even studies clearly undertaken to achieve political results can...
contribute to the development of the economic analysis of law, as two famous contributions show:

- A global analysis was initiated by the Commission in 1986, whose objective was to evaluate the potential economic impact of completing the internal market by 1992. It emphasized that the removal of constraints and the emergence of new competitive incentives would lead to four principal types of effects: a significant reduction in costs; an improved efficiency in enterprises; a better allocation of resources; and a flow of innovations. The most publicized claim relates to the substantial benefits of completing the single market program, which are not only for all goods, but also dynamic gains, that is, a higher sustainable rate of economic growth. It is suggested that if the entire program is achieved, there should be a gain to Community GDP of the order of 5%. Admittedly, the benefits cannot be clearly traced and escape the measurement powers of any social science; the analysis has, however, brought to public attention the view that one should consider the economic costs and benefits of integration.

- The recently published report “Some Market, One Money” is designed to be the sales brochure for the European Monetary Union (EMU) that the just mentioned global analysis (also called the Cecchini Report) was for the single market program. It emphasizes that the benefits resulting from EMU, among them the elimination of uncertainty and transaction costs, again, are benefits (the Commission provides a check list of sixteen) that are intangible and difficult to quantify, but the report is another example of applied economic analysis of regulation.

The main purpose of these studies is to achieve political consensus. Moreover, they still emphasize macroeconomic policy issues, and it would be exaggerated to pretend that they reflect the influence of an EC law and economics movement. On the other hand, coupled with the trend toward a more comprehensive economic analysis of integration, they are a sign of the positive climate for the development of an EC law and economics movement.

(ii) Numerous EC regulations provide for an administrative supervision of the economic measures whose positive integration is felt necessary. Such regulations are not adopted or implemented without discussing their economic consequences. Hence, there are microeconomic studies on regulations concerning goods, services, or money. More recently, studies have developed beyond the "four liberties" and have addressed an increasing number of regulations in the area of consumer protection. However, it should be pointed out that such contributions represent a very small share of the huge number of books and articles devoted to this topic; for example, an impressive volume of studies seriously dealing with the economics of regulation.

(iii) Competition policy is a core EC policy. If it should prevent private economic actors from monopolizing the benefits of integration and ensure that member states' activities remain neutral, it would be expected that there are numerous studies dealing with the economics of competition policy in the EC, many of them carried out by experts appointed by the Commission. In the antitrust area, there are applications of economic analyses concerning EC policy in

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See, e.g., Moelle (supra note 6) at p. 361.


See, e.g., its annual Report on Competition Policy (Luxembourg: Office for Official Publications of the European Communities).

Smith (supra note 66) at p. 222.
supply and concern mainly two areas, consumer safety and capital markets. This confirms that there is no established EC law and economics movement.

CONCLUDING REMARKS

The EC's aim at economic integration and the emphasis on minimizing EC intervention provide a favorable backdrop for the development of an EC law and economics movement. Nevertheless, such a movement is merely emerging. This situation reflects the existence of various obstacles. Some are typically EC-related, like the limited powers provided by the Treaty of Rome in traditional law and economics areas. Other barriers may be found at the member states' level, like the lack of competition among universities that prevents law and economics programs from multiplying, thus hampering development from below.

To date, therefore, economic analyses of EC regulations have focused on the macroeconomics of legal integration. At the microeconomic level, even taking into account competition law, little research has been done; this is especially obvious in areas where traditional law and economics contributions have first developed.

This does not prevent us from believing that the prospects for the development of the EC law and economics movement are good. Some of the elements justifying our optimism have already been mentioned: the willingness (and need) of the Commission to justify its regulations in economic terms; the broadening powers of the EC in areas where traditionally law and economics research has taken place; the increasing number of member state statutes that implement EC directives and thus pave the way for national law and economics analyses of EC rules.

There is one additional favorable element to consider. The main challenge during the 1990s will no longer be the adoption of EC regulations but their enforcement. This task will have to be achieved by the use of various sanctions and by increasingly filing cases before member states' courts and/or the EC Court of Justice. Enforcement and jurisprudence being two strengths of law and economics analysis, this can only help to establish the EC law and economics movement.