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Economics and Sociology: The Prospects for an Interdisciplinary Discourse of Law

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ECONOMICS AND SOCIOLOGY: THE PROSPECTS FOR AN INTERDISCIPLINARY DISCOURSE ON LAW

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> When you dig deep down, economists are scared to death of being sociologists. The one great thing we have going for us is the premise that individuals act rationally in trying to satisfy their preferences. That is an incredibly powerful tool, because you can model it.[1] - *Charles Schultze*

> By precluding attention to non-rational elements of human behavior, economists leave themselves no mechanism for *learning* about the crude and messy empirical world that so defies their models. Economists pay a heavy price for the very simplicity and elegance of their models: empirical ignorance, misunderstanding, and, relatedly, unrealistic and bizarre policy recommendations.[2] -*Paul Hirsch et al.*

> It is also clear that if there is no effective communication between economists and sociologists, social problems will be analyzed as if they had no economic dimension, and economic problems will be analyzed as if they had no social dimension. This disassociation will lead to many difficulties, since most real problems are not as easily categorized under the rubrics of "economics" or "sociology" as are academic disciplines.[3] -*Richard Swedberg*

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1. Robert Kuttner, *The Poverty of Economics*, ATLANTIC MONTHLY, Feb. 1985, at 74, 76 (quoting Charles Schultze).

2. Paul Hirsch et al., *"Dirty Hands" versus "Clean Models": Is Sociology in Danger of Being Seduced by Economics?*, 16 THEORY & SOC. 317, 320 (1987).

3. RICHARD SWEDBERG, ECONOMICS AND SOCIOLOGY 3 (1990).

I. INTRODUCTION

As the above quotes by Charles Schultze and Paul Hirsch et al. suggest, the "sister disciplines" of economics and sociology have developed in very different ways and with no small measure of animosity between their practitioners. Economics has focused on mathematical models of individual rational maximization while sociology is driven largely by empirical work and is interested more in society as a whole and social activities that might not be individually rational. Yet the disciplines have not always been so distinct, and changes are afoot that seem to promise that the future holds a more useful exchange between the two disciplines than has occurred previously during this century. The promise for profitable scholarly exchange between the two disciplines seems particularly bright in subject areas such as the law which are not traditionally the province of economics, and in which the assumptions of the neoclassical economic model do not always produce good explanatory models.

My purposes in this essay are two-fold. First, to provide some background on the disciplines of economics and sociology as a basis for the discussion at this Symposium and for my own discussion of the potential for an interdisciplinary discourse on law. In this regard, in the first section of the essay I provide a brief history of the relationship between the two disciplines, a brief outline of the basic characteristics of each disciplinary perspective, and a brief discussion of the emerging opportunities for useful exchange between the two disciplines. Second, I examine the prospects that the economic analysis of law can be usefully informed by sociological perspectives. I examine just this portion of the possible discourse between the two disciplines because, as a law and economics scholar, it is this portion of the discourse that I feel most competent to address. I leave it to my colleagues who study law from a sociological perspective to discern what can be gleaned from the economic perspective that is of most use to them in their analyses.

II. THE SISTER DISCIPLINES OF ECONOMICS AND SOCIOLOGY

A. A Brief History of Economics and Sociology

There are basically three ways that two disciplines can relate to each other.[4] The first is free and open communication over shared problems for the benefit of both disciplines. The second is indifference, perhaps with segregated subject matter. The third is open hostility or

4. *Id.* at 9.

"imperialism," with one or both disciplines vying to take over the other's subject matter and/or means of analysis. Like true siblings, economics and sociology have enjoyed and suffered all three of these types of relationships over the course of their long association.[5]

The relationship started out fairly collegial. Economics is the older of the two disciplines, with scholarly work that can be identified as distinctly "economic" having appeared as early as the seventeenth century.[6] However, early economists such as Adam Smith, Karl Marx and John Stuart Mill hypothesized about both economic theory and social institutions with equal skill and aplomb.[7] At the time that sociology began to emerge as a distinct discipline, as scholars struggled to analyze the social upheavals that accompanied the industrial and French revolutions,[8] there was a free interchange on subject matter and methods of analysis between "economists" and the newly budding "sociologists."[9] Indeed, it is sometimes difficult to distinguish early economic and sociological work. For example, Marx is claimed as a founder, with somewhat differing enthusiasm, by both disciplines.[10]

Even in its nascent stage, however, the relationship was not always pacific. In the *Cours de Philosophie Positive*, one of the seminal sociological works of the mid-nineteenth century, Auguste Comte criticized economics and referred to it as that "alleged science."[11] Comte argued that both knowledge and society evolved from lower to higher states, and that "sociology" represented the height of human knowledge—"the queen of all sciences."[12] Economics was an earlier stage of human knowledge with no independent role in analyzing problems.[13] Confronted with such blatant sociological imperialism, economists disputed Comte's claims and criticized his work. The brunt of the counteroffensive was carried by the three English economists, Alfred Marshall, John Cairnes and John Neville Keynes, who contested

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5. *Id.* at 9-18.

6. Montchrétien first used the term "political economy" in 1615. *Id.* at 4.

7. *Id.* at 9.

8. R. SERGE DENISOFF & RALPH WAHRMAN, AN INTRODUCTION TO SOCIOLOGY 9 (3d ed. 1983); JON M. SHEPHARD, SOCIOLOGY 23 (5th ed. 1993).

9. SWEDBERG, *supra* note 3, at 9.

10. *See* DENISOFF & WAHRMAN, *supra* note 8, at 20-21; Edmund S. Phelps, POLITICAL ECONOMY: AN INTRODUCTORY TEXT 80, 373-75 (1985); SHEPHARD, *supra* note 8, at 24.

11. 4 AUGUSTE COMTE, COURS DE PHILOSOPHIE POSITIVE 193-204 (Paris, La Societe Positiviste 1896).

12. SWEDBERG, *supra* note 3, at 9. Such bravado is not entirely extinct among sociologists. *See generally* Hirsch et al., *supra* note 2.

13. SWEDBERG, *supra* note 3, at 9.

Comte's analysis point by point.[14] John Neville Keynes summed up the view of the leading British economists on sociology around the turn of the century in his textbook *The Scope and Method of Political Economy*: "Comte charged political economy with being radically sterile as regards results. But what results has sociology, conceived as a master-science dealing with man's social life as a whole, yet to sh[o]w?"[15]

Despite such tensions, the two disciplines remained relatively integrated until early in the twentieth century. Institutional economists such as John R. Commons, Wesley Clair Mitchell and Thorstein Veblen relied on sociological insights in their work, while leading sociologists such as Emile Durkheim and Max Weber drew heavily on ideas from economics.[16] Indeed, Max Weber, one of the most distinguished sociological theorists of his time, held several academic positions as an economist.[17] However, early in this century, the two disciplines began to diverge in fundamental ways.

First, the disciplines began to separate in terms of the subject matter that each studied. Economists began to confine themselves to examining markets while sociologists began to eschew analyzing markets and instead analyzed a variety of miscellaneous topics including the family, social institutions and deviance.[18] In part, this separation in subject matter was driven by interests and methodological changes, but it was also driven by faculty politics. The new discipline of sociology was not yet accepted in academia, and the "price" for establishing independent departments of sociology at major universities was that the sociologists develop a subject matter independent of the existing social sciences, including economics.[19] It was from this academic turf war that sociology developed the unfortunate moniker "the left-over science."[20]

Second, the disciplines began to separate in terms of methodology. Economists undertook an effort to "professionalize" and "mathematize" their discipline, divorcing it from what they viewed as "amateurism" and "reformism."[21] Instrumental in this effort was the rise of "positive

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14. *Id.* at 10 (citing JOHN ELLIOTT CAIRNES, *M. Comte and Political Economy*, *in* ESSAYS IN POLITICAL ECONOMY 265-311 (1873); JOHN NEVILLE KEYNES, THE SCOPE AND METHOD OF POLITICAL ECONOMY 112-41 (4th ed. 1955); ALFRED MARSHALL, THE PRESENT CONDITION OF ECONOMICS 33-38 (1885); 1 ALFRED MARSHALL, PRINCIPLES OF ECONOMICS 71-73 (1891)).

15. KEYNES, *supra* note 14, at 139.

16. Arne L. Kalleberg, *Sociology and Economics: Crossing the Boundaries*, 73 SOC. FORCES 1207, 1207 (1995).

17. Hirsch et al., *supra* note 2, at 320.

18. SWEDBERG, *supra* note 3, at 10-11.

19. *Id.* at 10.

20. *Id.* at 11.

21. *See id.* at 10.

economics" and the neoclassical model.[22] As will be discussed below,[23] under the philosophy of positive economics, economists sought to produce positive predictions about human behavior based on "objective" assumptions. The idea was to produce a "positive science" of human behavior which would model the machinations of the marketplace in much the same way that the "hard sciences" of physics, chemistry and biology had modeled the physical world.[24] The neoclassical model consisted of a perspective for analysis, that of individual choice, and a set of assumptions about the circumstances of such choices, that were mathematically tractable and could be employed within the framework of positive economics. Following this approach, the discipline began to be dominated by grand mathematical theories of individual choice that yielded positive or "scientific" predictions based on "objective" assumptions. Sociology, on the other hand, remained more eclectic and nonmathematical in its approach to problems.[25] Although there are a variety of schools of thought in sociology,[26] it has remained driven more by data than theoretical paradigm, and certainly no paradigm has dominated sociology the way the neoclassical model has dominated economics.[27] Moreover, as a group, sociologists have remained more willing to embrace openly normative analyses than the "professionalism" of economics would allow.[28]

As a result of this divergence in subject matter and methodology, the disciplines entered a period of relative indifference towards each other. During the period of 1930 to 1950 there was very little interaction between the two disciplines, and each developed largely independently of the other.[29] One of the few attempts at collaboration during this period occurred between economist Frank Knight and sociologist Talcott Parsons.[30] Knight was endeavoring to provide an historical context for the analysis of economic institutions based on the work of Max Weber, and naturally sought the counsel of one of the leading sociologists of his day. Unfortunately the relationship ended badly with an angry public

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22. *See* Kalleberg, *supra* note 16, at 1208.

23. *See infra* part II.B.

24. MILTON FRIEDMAN, *The Methodology of Positive Economics*, *in* ESSAYS IN POSITIVE ECONOMICS 3, 16-17 (1953).

25. SWEDBERG, *supra* note 3, at 11-14, 321-23; Hirsch et al., *supra* note 2, at 318-20.

26. DENISOFF & WAHRMAN, *supra* note 8, at 14-15, 20-21.

27. Hirsch et al., *supra* note 2, at 318.

28. *Id.*

29. SWEDBERG, *supra* note 3, at 13; Kalleberg, *supra* note 16, at 1208.

30. SWEDBERG, *supra* note 3, at 14-15.

exchange and recriminations.[31] The period of 1950 to 1980 held little more direct exchange between the disciplines, save for some collaborative work at Harvard between sociologists Francis X. Sutton, Talcott Parsons and Neil Smelser, and economists James Duesenberry, Carl Kaysen and James Tobin.[32] The result of this collaboration was a course in the Harvard graduate school entitled "The Sociological Analysis of Economic Behavior," and a number of books including *The American Business Creed* by Sutton, Harris, Kaysen and Tobin; *Economy and Society* by Smelser and Parsons; and *The Sociology of Economic Life* by Smelser.[33]

Recently, however, a series of events have occurred that suggest that the period of indifference and independence between the two disciplines is ending. Work in the two disciplines now shows convergence in both subject matter and methodology so that there is once again significant overlap in the questions economists and sociologists are exploring. Because of this overlap, it now seems that there are substantial grounds for useful exchange between the two disciplines. Before I discuss these recent developments and the present possibilities for useful exchange, I will first present some background on the traditional methods of economic and sociological analysis during this century.

B. Economic Analysis: The Study of Choice by Individual Rational Actors

As previously mentioned, for the majority of this century the objective of most economists has been to produce a "positive science" of economics analogous to the physical sciences. The ultimate goal of such a science is to develop a theory or hypothesis that yields accurate predictions about phenomena that have not yet been observed.[34] The theory or hypothesis is developed by making assumptions about the world

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31. *Id.* at 15. Parsons is in fact credited with coining the term "economic imperialism" in describing economists' aggressive assertion of their methodology in analyzing social problems. *See id.* at 14-15. Knight is supposedly the originator of a joke about sociology which demonstrates both disdain for the discipline and the pathetic state of academic humor: "'Sociology is the science of talk, and there is only one law in sociology. Bad talk drives out good talk.'" *Id.* at 15 (quoting Frank Knight). The punch line of this joke is a reference to Gresham's law in economics that "bad money drives out good money." THE MIT DICTIONARY OF MODERN ECONOMICS 174-75 (David W. Pearce ed., 3d ed. 1986).

32. SWEDBERG, *supra* note 3, at 15.

33. TALCOTT PARSONS & NEIL J. SMELSER, ECONOMY AND SOCIETY: A STUDY IN THE INTEGRATION OF ECONOMIC AND SOCIAL THEORY (1956); NEIL J. SMELSER, THE SOCIOLOGY OF ECONOMIC LIFE (1963); FRANCIS X. SUTTON ET AL., THE AMERICAN BUSINESS CREED (1956).

34. FRIEDMAN, *supra* note 24, at 7.

that abstract the essential features of the examined problem, and then applying logic to these assumptions to deduce predictions about people's behavior.[35] Accordingly, most economists have aspired that economics be a *positive* science, accurately describing the world rather than making normative arguments as to how the world ought to be. Another essential feature of economics is that it is deductive, deducing from its assumptions theories about the real world that can then be empirically tested rather than collecting data on the world and then deriving by induction what the best explanatory theory might be.

The "neoclassical model" defines a set of assumptions that economists commonly make in analyzing problems.[36] Some of these assumptions are associated with core characteristics of modern economics, while others are included because they round out the model in a way that is mathematically tractable and has proven useful in analyzing markets.

Under the neoclassical model, the perspective for analyzing the problem is generally one of a hypothetical individual.[37] Thus the dominant unit of analysis in economics is the individual and the dominant phenomena for study are individual choice and action. Even in studying the actions of groups of individuals, for example in a market, economists commonly analyze the problem from the perspective of a hypothetical individual, and then "aggregate" across many such individuals by multiplying the individual result.[38] The actions of these atomistic individuals are coordinated and rationalized by the "invisible hand" of the competitive market. By providing alternatives, the market prevents strategic behavior by individuals and allows resources to be bid up or down to the value of their marginal product.[39]

A core assumption of the neoclassical model is that people are rational maximizers of some good, for example utility, wealth or profits.[40] Economists have a well-defined notion of what it means to be a rational maximizer, assuming that people have preferences with respect

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35. *Id.*

36. GARY S. BECKER, THE ECONOMIC APPROACH TO HUMAN BEHAVIOR 3-14 (1976). *See generally* FRIEDMAN, *supra* note 24, at 3-43; PHELPS, *supra* note 10, at 236-37; Kenneth G. Dau-Schmidt, *Relaxing Traditional Economic Assumptions and Values: Toward a New Multi-Disciplinary Discourse on Law*, 42 SYRACUSE L. REV. 181, 183 (1991).

37. Hirsch et al., *supra* note 2, at 318.

38. HAL R. VARIAN, INTERMEDIATE MICROECONOMICS 267 (1987) [hereinafter VARIAN, INTERMEDIATE MICROECONOMICS]; HAL R. VARIAN, MICROECONOMIC ANALYSIS 150 (2d ed. 1984) [hereinafter VARIAN, MICROECONOMIC ANALYSIS].

39. VARIAN, INTERMEDIATE MICROECONOMICS, *supra* note 38, at 326; VARIAN, MICROECONOMIC ANALYSIS, *supra* note 38, at 200.

40. VARIAN, INTERMEDIATE MICROECONOMICS, *supra* note 38, at 3, 33; VARIAN, MICROECONOMIC ANALYSIS, *supra* note 38, at 115.

to all possible choices, that these preferences are reflexive and transitive,[41] and that the individual will choose the available option which he or she most prefers.[42] As a result of the assumption that people are rational maximizers, the logic that is employed in deducing theories from the model's assumptions is usually mathematical optimization theory. This mathematization of the discipline not only constitutes an identifying characteristic of modern economics, but also to some extent determines the additional assumptions that are made to fill out the rest of the model.[43] It is a strong advantage in economics that an assumption not only yield good predictive results, but also be "tractable" in that it can be easily modeled in mathematics.

Another core neoclassical assumption is that people's preferences are exogenous to the model, or in other words, that people's preferences are determined outside the model and thus are given for the purposes of analysis.[44] In the words of Gary Becker:

> The assumption of stable preferences provides a stable foundation for generating predictions about responses to various changes, and prevents the analyst from succumbing to the temptation of simply postulating the required shift in preferences to "explain" all apparent contradictions to his predictions.
>
> The combined assumptions of maximizing behavior, market equilibrium, and stable preferences, used relentlessly and unflinchingly, form the heart of the economic approach as I see it.[45]

Elsewhere, in the same passage, Becker concedes that, at least in part, economists have adopted the assumption of exogenous preferences because "economists generally have had little to contribute, especially in recent times, to the understanding of how preferences are formed."[46]

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41. For preferences to be reflexive, it means that the individual must view each opportunity as at least as preferred as an identical opportunity. For preferences to be transitive it means that if the individual prefers A over B, and B over C, then it must be that the individual prefers A over C. VARIAN, INTERMEDIATE MICROECONOMICS, *supra* note 38, at 35, 44-46; VARIAN, MICROECONOMIC ANALYSIS, *supra* note 38, at 112-13.

42. VARIAN, INTERMEDIATE MICROECONOMICS, *supra* note 38, at 35, 44-46; VARIAN, MICROECONOMIC ANALYSIS, *supra* note 38, at 112-13.

43. SWEDBERG, *supra* note 3, at 322.

44. VARIAN, INTERMEDIATE MICROECONOMICS, *supra* note 38, at 20-60; VARIAN, MICROECONOMIC ANALYSIS, *supra* note 38, at 111-15; John R. McKean & Robert R. Keller, *The Shaping of Tastes, Pareto Efficiency and Economic Policy*, 12 J. BEHAV'L ECON. 23, 23-24 (1983).

45. BECKER, *supra* note 36, at 5.

46. *Id.*

With preferences held constant, economists explain changes in human behavior by postulating the existence of costs, perhaps psychic and unseen, which influence behavior. In this way, the existence of costs, either monetary or psychic, "completes" the economic approach in much the same way that postulating the existence of energy (perhaps unobserved) completes the energy system, and preserves the law of the conservation of energy.[47]

A final set of core assumptions for the neoclassical model are that transactions and information are costless.[48] These assumptions facilitate modeling and bolster the efficacy of markets in coordinating individual actions. With zero transaction and information costs, all efficient exchanges are made. No one is left holding a resource someone else values more because they cannot find the buyer and negotiate the deal.[49] With costless perfect information every consumer knows the price and quality of each alternative good and every producer has all the technical expertise he or she needs to competitively produce any good.[50] Although these assumptions are important in facilitating modeling, economists seem less attached to them as core assumptions in economic analysis. In part this may be due to a fairly extensive and longstanding literature on transaction and information cost economics in the economics literature.[51]

The assumptions of the neoclassical model are clearly unrealistic, and the importance of this lack of realism has been a matter of some debate both within and outside the discipline.[52] Every model or analysis of a problem is necessarily an abstraction from reality, ignoring some complication of life to focus on others. The art of modeling or analysis is to know which abstractions one can make and still capture the essential elements of the problem, or in other words, which simplifying assumptions can be made and still preserve the essence of the problem for the purpose of the analysis.[53] In economics, the argument most closely identified with the neoclassical model is that the purpose of modeling is

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47. *Id.*

48. VARIAN, INTERMEDIATE MICROECONOMICS, *supra* note 38, at 486-90; VARIAN, MICROECONOMIC ANALYSIS, *supra* note 38, at 189-98.

49. PHELPS, *supra* note 10, at 236-37.

50. *Id.*

51. *See, e.g.*, OLIVER E. WILLIAMSON, CORPORATE CONTROL AND BUSINESS BEHAVIOR: AN INQUIRY INTO THE EFFECTS OF ORGANIZATION FORM ON ENTERPRISE BEHAVIOR (1970); OLIVER E. WILLIAMSON, ECONOMIC ORGANIZATION: FIRMS, MARKETS, AND POLICY CONTROL (1986); George A. Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q. J. ECON. 488 (1970).

52. *See, e.g.*, AMITAI ETZIONI, THE MORAL DIMENSION: TOWARD A NEW ECONOMICS 17 (1988).

53. FRIEDMAN, *supra* note 24, at 15.

prediction and so the accuracy of the underlying assumption is of little importance as long as the model yields accurate predictions.[54] Milton Friedman has even gone so far as to argue that "paradoxically" the most important hypotheses have the most unrealistic assumptions because: "[a] hypothesis is important if it 'explains' much by little, that is, if it abstracts the common and crucial elements from the mass of complex and detailed circumstances surrounding the phenomena to be explained and permits valid predictions on the basis of them alone."[55] However, other economists have argued that there are purposes of modeling beyond mere prediction, for example, to explain a phenomenon or to provide a catalogue of knowledge for future work.[56] If one undertakes modeling for these purposes, it is argued, then the realism of assumptions is important.[57] For example, if one merely wanted to predict the fluctuations of stock prices, a model premised on the existence of fairies might do very well, provided it yielded good predictive results. However, if one wanted to actually understand why stock prices fluctuate or build a new model of futures markets, a model premised on the existence of fairies would not be a good starting point.

In sum, throughout the bulk of this century economists have endeavored to construct their discipline as a positive science of human behavior. This effort has been undertaken largely through building models of individual choice, based on certain simplifying assumptions and employing the logic of mathematics to derive testable predictions about human behavior. The assumptions that are employed in these models have largely been confined to a well-defined set of assumptions identified as the "neoclassical model." Under the neoclassical model, people are modeled as individuals who make rational decisions in order to maximize their enjoyment according to fixed preferences. As will be seen, the economists' means of analyzing problems is very different from that undertaken by sociologists.

54. *Id.* at 14-15.

55. *Id.*

56. For a discussion of the different possible purposes in modeling see EDITH STOKEY & RICHARD ZECKHAUSER, A PRIMER FOR POLICY ANALYSIS 8-22 (1978); Allen Gibbard and Hal R. Varian, *Economic Models*, 75 J. PHIL. 664 (1978).

57. *See, e.g.*, Cento Veljanovski, *The Economic Approach to Law: A Critical Introduction*, 7 BRIT. J.L. & SOC'Y 158, 181-82 (1980). Veljanovski argues that the realism of assumptions is more important in explanatory models because with explanatory models there usually is no empirical test other than the argument that the model adequately explains the examined phenomenon. Thus, if the assumptions are unrealistic, there is little test of empirical correspondence between the model and reality. With predictive models, even if the assumptions are unrealistic, at least there is the test of whether the predictions are empirically accurate to tie the model to reality.

C. Sociology: The Study of Society and Culture

As a discipline, sociology is much less well-defined than economics. Although there are schools of thought in sociology, for example, the "consensus theorists" and the "conflict theorists,"[58] sociology has no core assumptions and no dominant paradigm.[59] Some sociologists see this lack of orthodoxy as an impediment to progress in the discipline and have argued for more work toward regularizing assumptions.[60] However, others have argued that the diversity of approaches in sociology is in fact one of the discipline's greatest strengths.[61] It is argued that by approaching a problem from a variety of perspectives that are then debated in the sociology literature, the discipline arrives at more realistic and useful analyses than are possible through a monotonic discipline such as economics.[62] This very lack of orthodoxy, however, does give sociology some identifying characteristics. It also means that it is probably easiest to describe sociology by contrasting the characteristics of its practice with those previously outlined for economics.[63]

The diversity of approaches in sociology has lead to a wider acceptance of openly normative analysis among sociologists than among economists.[64] With few or no dominant assumptions on which to base their analyses, sociologists have spent more time discussing their assumptions and the underlying normative implications of those assumptions than economists.[65] However, this positive/normative distinction between the two social sciences is fairly superficial since, as has been extensively discussed in the law and economics literature,[66] "positive" economic analyses under the neoclassical model involve a host of normative assumptions, such as the equity of the current distribution

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58. The "consensus theorists," who included Burke, St. Simon, Comte and Durkheim, viewed society as an organism, held together by shared beliefs, values and a division of labor. DENISOFF & WAHRMAN, *supra* note 8, at 15-16, 18.

59. Hirsch et al., *supra* note 2, at 318.

60. Kalleberg, *supra* note 16, at 1210.

61. *See, e.g.*, Hirsch et al., *supra* note 2, at 332-33.

62. *See id.*

63. My apologies to sociologists for what is undoubtedly an ignorant and overly simplistic description of their discipline. In my efforts, I was hampered not only by the complexity and diversity of your discipline, but my own ignorance of its literature. As an economist, however, I am compelled to plunge on with my analysis despite the perhaps excess simplicity of my assumptions.

64. SWEDBERG, *supra* note 3, at 10; Hirsch et al., *supra* note 2, at 334.

65. SWEDBERG, *supra* note 3, at 10.

66. Dau-Schmidt, *supra* note 36, at 181-82, 185-86; Arthur A. Leff, *Economic Analysis of Law: Some Realism About Nominalism*, 60 VA. L. REV. 451, 454-56 (1974); Veljanovski, *supra* note 57.

of wealth and preferences, and it seems fair to assert that at least some economists undertake such "positive" analyses with normative objectives in mind.[67]

Sociology's diversity of approaches probably also has contributed to the discipline's focus on data.[68] In contrast with economists' practice of deducing testable predictions from mathematical models, sociologists tend to induce explanatory theories from observed data.[69] The explanatory nature of their models has led sociologists to be very concerned with the realism of their assumptions.[70] Thus in the tradeoff between realism and simplicity or mathematical tractability in modeling,[71] sociologists prefer the "dirty hands" of complex data generated models over the "clean models" of mathematical theory.[72]

Sociology also differs from economics in the focus of its analysis. Rather than focusing on individual decision-making, sociologists generally examine group behavior or society as a whole.[73] Sociologists study social roles and status, and the various norms for behavior people acquire in a given culture.[74] Sociologists also study how social roles and norms for behavior are passed down from one generation to the next in what they refer to as the "socialization" process.[75] Sociologists argue that individualistic explanations of behavior are inadequate because people's actions are influenced by these social forces that individuals do not create and cannot control.[76] Accordingly, the economist Duesenberry has argued that economics is about the choices people make, while sociology

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67. *See, e.g.*, ROBERT H. BORK, THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF (1978); MILTON FRIEDMAN & ROSE D. FRIEDMAN, FREE TO CHOOSE (1980); Richard Epstein, *A Common Law for Labor Relations: A Critique of the New Deal Labor Legislation*, 92 YALE L.J. 1357 (1983).

68. SWEDBERG, *supra* note 3, at 321-22; Hirsch et al., *supra* note 2, at 318.

69. Hirsch et al., *supra* note 2, at 318-19.

70. *Id.* at 318.

71. Joan Robinson is reported to have described the dilemma between tractability and realism in modeling as follows: "'[T]he two questions to be asked of a set of assumptions in economics are: Are they tractable? and: Do they correspond with the real world? . . . [M]ore often one set [of assumptions] will be manageable and the other realistic,' . . . ." Ronald Coase, *The Nature of the Firm*, 4 ECONOMICA 386, 386 (1937).

72. C. WRIGHT MILLS, THE SOCIOLOGICAL IMAGINATION 23 (1959); Hirsch et al., *supra* note 2, at 318.

73. EARL BABBIE, THE SOCIOLOGICAL SPIRIT: CRITICAL ESSAYS IN A CRITICAL SCIENCE 41-57 (1988); DENISOFF & WAHRMAN, *supra* note 8, at 9; SHEPHARD, *supra* note 8, at 12; Kalleberg, *supra* note 16, at 1211, 1214.

74. BABBIE, *supra* note 73, at 94-111; DENISOFF & WAHRMAN, *supra* note 8, at 50-54, 80-81; SHEPHARD, *supra* note 8, at 130-36.

75. BABBIE, *supra* note 73, at 94-111; DENISOFF & WAHRMAN, *supra* note 8, at 117-119; SHEPHARD, *supra* note 8, at 130-36.

76. SHEPHARD, *supra* note 8, at 12.

is about why people don't have choices.[77]

Because of their interest in social influences on people's actions, sociologists might argue that, rather than assuming rationality, they study it.[78] Sociologists believe that what is rational for a person to do in a given situation has to be studied within their cultural context. People assign different values to different responses and interpret information and events differently depending on the culture in which they are socialized.[79] Moreover, sociologists accept the idea that a person's actions may be expressive rather than instrumental for the purpose of satisfying some individual maximization problem.[80] This difference in approach to the subject of rationality between economists and sociologists led Pareto to distinguish the two disciplines, arguing that economics was the study of logical or rational actions while sociology was the study of nonlogical or irrational actions.[81]

The consideration of social influences on people's actions also requires that sociologists treat people's preferences as endogenous to their models.[82] As modeled by sociologists, the process of socialization and acculturation determines, in whole or in part, what people prefer. For example, otherwise rational people of Scandinavian heritage will eat "lutefisk," fish that is treated with lye and boiled until it has the consistency of fish jello, because they have been acculturated to enjoy it as part of their heritage.[83] Unlike economists who tend to assume that preferences are exogenously determined, it is considered an important question in sociology to examine how people's preferences change with

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77. *See* Philippe Van Parijs, *Sociology as General Economics*, 22 EUR. J. SOC. 299-301 (1981). Of course economists also recognize that people's choices are constrained. Indeed, it is common for economists to define the discipline in terms of the study of how people choose to employ *source* resources, expressly acknowledging constrained choice. *See, e.g.*, PAUL A. SAMUELSON, ECONOMICS: AN INTRODUCTORY ANALYSIS 5-6 (6th ed. 1964). However, when economists talk about constrained choices they are focusing on how scarcity and people's budgets affect their choices rather than how culture might influence what people choose within the confines of their budget.

78. Hirsch et al., *supra* note 2, at 323.

79. DENISOFF & WAHRMAN, *supra* note 8, at 86-87; MILLS, *supra* note 72, at 165-76; SHEPHARD, *supra* note 8, at 95.

80. Hirsch et al., *supra* note 2, at 322.

81. Van Parijs, *supra* note 77, at 299-301.

82. Hirsch et al., *supra* note 2, at 322-23.

83. My apologies to the ardent proponents of lutefisk in the state of Wisconsin. I originally had an example based on the Inuits' taste for old meat, SHEPHARD, *supra* note 8, at 95, but decided that the lutefisk example was more appropriate for the *Wisconsin Law Review*. I am part Swedish and have partaken of the Scandinavian cultural heritage of Wisconsin and Minnesota, including eating lutefisk. Although I am proud that my ancestors had the tenacity to survive long winters by eating lutefisk, short of starvation or deep acculturation, it is not clear to me why anyone would eat this dish today.

cultural and institutional changes.[84]

Although sociology is a very diverse discipline and thus harder to define and summarize, it is apparent that sociologists approach problems in a way that is very different from that commonly employed by economists. Perhaps because of the diversity in the discipline, sociology is very data driven, with theories being inductively produced to explain the data rather than deductively derived from theoretical assumptions. Sociologists highly value realism in their explanatory models. Sociologists also more readily accept openly normative analyses than do economists. Finally, sociologists have a very different perspective of analysis from that of economists, focusing on groups of people or society as a whole rather than individuals. This difference in analytical perspective both requires and facilitates the examination of questions economists often assume as given, such as what determines what is rational and how preferences are determined. How these two very different approaches to analyzing problems might be engaged in a useful scholarly exchange that would benefit both disciplines is a very interesting question.

D. *The Recent Convergence of Economics and Sociology*

As previously mentioned,[85] after years of indifference and independence there now seems to be some movement toward convergence between economics and sociology. First, the two disciplines have once again undertaken the study of the same subject matter. Beginning with the pioneering work of Gary Becker in the 1960s, economists have sought to broaden their inquiry from markets to all aspects of society, including the family, education, discrimination, politics and even the law.[86] At the same time, sociologists such as Harrison White and Mark Granovetter have recently renewed the sociological examination of such "economic" phenomena as business structures, labor markets and markets in general.[87] Some sociologists have not been entirely happy about the

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84. BABBIE, *supra* note 73, at 23-37; Hirsch et al., *supra* note 2, at 325-26.

85. *See supra* part II.A (last paragraph).

86. *See, e.g.*, BECKER, *supra* note 36; GARY S. BECKER, THE ECONOMICS OF DISCRIMINATION (1957) [hereinafter THE ECONOMICS OF DISCRIMINATION]; GARY S. BECKER, HUMAN CAPITAL (1964); JAMES M. BUCHANAN, THE LIMITS OF LIBERTY: BETWEEN ANARCHY AND LEVIATHAN (1975); RICHARD A. POSNER, THE ECONOMIC ANALYSIS OF LAW (4th ed. 1992); Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169 (1968).

87. MARK GRANOVETTER, GETTING A JOB: A STUDY OF CONTACTS AND CAREERS (1974); HARRISON C. WHITE, CHAINS OF OPPORTUNITY: SYSTEM MODELS OF MOBILITY IN ORGANIZATIONS (1970); Mark Granovetter, *Economic Action and Social Structure: The Problem of Embeddedness*, 91 AM. J. SOC. 481 (1985); Mark Granovetter

expansion of economics into their traditional subject matter and have viewed this expansion as "economic imperialism"[88] in much the same way the early economists jealously guarded their subject matter when sociology was born.[89] Although the forays by economists into the new subject areas have probably been undertaken with an unfortunate amount of hubris on the part of the economists,[90] this innovative work and the new work by sociologists on markets means that there now is substantial overlap in examined subject matter between the two disciplines and so substantial opportunity for useful exchange.

Second, economics and sociology show some movement toward a new compatibility in methodology. A number of economists have shown interest in relaxing the assumptions of the neoclassical model. Herbert Simon has done pioneering work in relaxing the assumption of rational maximizing behavior by proposing a model of bounded rationality and "satisficing."[91] Simon's work has been systematized to yield useable predictions such as the "framing effect" by Amos Tversky and Daniel Kahneman.[92] Oliver Williamson has attempted to change the focus of economic analysis from atomistic individuals to groups by reviving institutional analysis in economics.[93] Anatol Rapoport, Albert Chammah

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and Roland Soon, *Threshold Models of Interpersonal Effects in Consumer Demand*, 7 J. ECON. BEHAV. & ORGANIZATION 83 (1986); Harrison C. White, *Where Do Markets Come From?*, 87 AM. J. SOC. 514 (1981).

88. *See generally* Hirsch et al., *supra* note 2. *See also* SWEDBERG, *supra* note 3, at 16; Michael E. Davern & D. Stanley Eitzen, *Economic Sociology: An Examination of Intellectual Exchange*, 54 AM. J. ECON. & SOC. 79 (1995).

89. *See supra* notes 11-15 and accompanying text.

90. Davern & Eitzen, *supra* note 88, at 79-80.

91. HERBERT SIMON, MODELS OF MAN (1957). Under Simon's theory of bounded rationality, human agents are rational up to some limit that occurs because of their limited capacity for computation and information processing. As a result, rules and institutions emerge to reduce the amount of complexity faced by economic agents. One such rule is "satisficing," in which the agents seek to achieve some aspirational level or goal rather than strictly maximizing. *Id.* at 205.

92. Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, 211 SCIENCE 453 (1981). Tversky and Kahneman have established that people tend to value gains less than avoiding commensurate losses and so tend to be risk averse with respect to potential gains and risk taking with respect to potential losses. Whether a gamble is treated as a potential gain or potential loss depends on a person's perception of what constitutes the status quo and how the choice is "framed" in the person's mind. The different treatment of potential gains and potential losses and the possible ambiguity of how the gamble is presented lead to the "framing effect" in that predictable changes in whether a person chooses to undertake a gamble can occur depending on whether the gamble is "framed" as a potential gain or a potential loss. *Id.* at 453-56.

93. OLIVER E. WILLIAMSON, THE ECONOMIC INSTITUTIONS OF CAPITALISM: FIRMS, MARKETS, RELATIONAL CONTRACTING (1985); OLIVER E. WILLIAMSON,

and others have employed game theory to model strategic behavior and show how the divergence of individual and collective interests and imperfect information can frustrate efficient exchange.[94] A variety of economists, including John Kenneth Galbraith, have begun questioning the appropriateness of the assumption of exogenous preferences in examining certain phenomena such as child rearing, religion, education and the criminal law.[95] Finally, George Akerlof has attacked the assumption of perfect information, arguing for the adoption of a new multidisciplinary approach to the study of markets.[96] Similarly, some sociologists have begun to work rational choice theory, borrowed from economics, into sociological analysis.[97] As a result, there is now sufficient overlap in methodology that work can probably be usefully integrated from one discipline into the other.

It can be argued that the coalescence of economics and sociology on subject matter and methodology are related: as economics expanded to other subject matters, the inadequacies of the neoclassical model in capturing the essence of some problems became apparent. However, the movement in economics away from the neoclassical model was probably inevitable even if economists had remained in their traditional stomping ground of the market place since, once all the most obvious applications of the neoclassical model had been made, tinkering with the assumptions was the only means left for economists to gain insight into the examined

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MARKETS AND HIERARCHIES, ANALYSIS AND ANTITRUST IMPLICATIONS (1975). Although related to Simon's work, Williamson relies on transaction costs beyond limitations in cognitive processing to motivate his focus on institutions as the appropriate unit of analysis. *Id.* In this regard Williamson's work also draws on the work of Ronald Coase. *See* Coase, *supra* note 71.

94. DREW FUNDENBERG & JEAN TIROLE, GAME THEORY (1991); ANATOL RAPOPORT & ALBERT M. CHAMMAH, PRISONER'S DILEMMA (1965); ERIC RASMUSEN, GAMES AND INFORMATION (2d ed. 1994); Ian Ayres, *Playing Games with the Law*, 42 STAN. L. REV. 1291 (1990).

95. ETZIONI, *supra* note 52; JOHN KENNETH GALBRAITH, THE AFFLUENT SOCIETY (1958); TIBOR SCITOVSKY, THE JOYLESS ECONOMY (1976); T.A. Marschak, *On the Study of Taste Changing Policies*, 68 AM. ECON. REV. PAPERS & PROC. 386 (1978); John R. McKean & Robert R. Keller, *The Shaping of Tastes, Pareto Efficiency and Economic Policy*, 12 J. BEHAV. ECON., Summer 1983, at 23.

96. GEORGE A. AKERLOF, AN ECONOMIC THEORIST'S BOOK OF TALES (1984); Akerlof, *supra* note 51. Akerlof is truly ambitious in his vision of multidisciplinary exchange and has argued for the adoption of a "psycho-socio-anthropo-economics." AKERLOF, *supra*, at 2-6; SWEDBERG, *supra* note 3, at 61.

97. JAMES S. COLEMAN, INDIVIDUAL INTERESTS AND COLLECTIVE ACTION (1986); JAMES S. COLEMAN, THE MATHEMATICS OF COLLECTIVE ACTION (1973); JAMES S. COLEMAN, POWER AND THE STRUCTURE OF SOCIETY (1974).

problems.[98] Regardless of the origin of these convergences, the present overlap of subject matter and methodology between economics and sociology provides a prime opportunity for useful interdisciplinary exchange between the two disciplines. I now turn to the prospects for a useful interdisciplinary exchange, and in particular, the benefits of such an exchange for the study of law.

III. ECONOMICS, SOCIOLOGY AND LAW: CAN THE SISTERS HAVE A USEFUL DISCUSSION ABOUT LAW?

A. The Prospects for an Interdisciplinary Discourse on Law

Interdisciplinary exchanges can be enormously useful, but need the right conditions to occur and be profitable. Interdisciplinary discourses are more likely to occur if there is significant overlap in the subject matter exchanged by the two disciplines. Although purely methodological exchanges have occurred and can be quite useful,[99] it is generally easier for scholars to make connections between their work and the work in other disciplines if the practitioners of the other disciplines are attempting to address the same substantive problems. Moreover, interdisciplinary discourses are more profitable if the right balance of methodological compatibility exists between the two disciplines. If the two disciplines are too similar in methodology and perspective, then their analyses are likely to be redundant and little will be learned through exchange. However, if the two disciplines are too different, then it is hard to integrate the theory and findings from one discipline into the other and the two disciplines remain alternative independent perspectives on the examined problems. Indeed, as previously discussed,[100] it was the divergence between economics and sociology in examined subject matter and methodology around the turn of the century that led to the long period of indifference and independence between the two disciplines.

Economics and sociology now seemed poised for a useful interdisciplinary exchange. There are still naysayers. Some have argued

98. This is not to suggest that I believe the neoclassical model does not retain a lot of explanatory power in analyzing the market place or other phenomena. I certainly believe it does. I just don't believe that it perfectly captures the essence of all phenomena, including the market place, and that it is inevitable that, in trying to gain insight into problems, economists will try to relax the assumptions of the neoclassical model in analyzing problems that are not well-suited to this model.

99. For example the movement toward creating a "positive science" in economics, discussed *supra* part II.B, is a pure methodological transplant from the hard sciences to economics.

100. *See supra* notes 18-29 and accompanying text.

that the differences between their deductive and inductive approaches to modeling are too great.[101] Others have argued that economics' focus on *individual rational* action is inimical to the discipline of sociology so that the work in the two disciplines is inherently incommensurable.[102] There also remain institutional barriers in that the hierarchical structure of academic disciplines sometimes makes it difficult for new ideas or ideas from other disciplines to penetrate the accepted orthodoxy of a discipline.[103] However, with the substantial overlap in subject matter and methodology that now exists between the two disciplines, it would seem that there is ample opportunity for useful discourse between the two disciplines on a number of subjects. Confirming this observation, there now exists a cornucopia of efforts to integrate insights from the two disciplines including: "Transaction Cost Economics," "Economic Sociology," "Social Rationality," "Rational Choice Sociology," "Socio-Economics" and even "Psycho-Socio-Anthropo-Economics."[104]

The prospects for a useful interdisciplinary exchange between economics and sociology on law seem particularly bright. Although economic analysis has already proved its value in analyzing the law,[105] law is one of those subject matters outside the traditional domain of economics which is not always well modeled using the assumptions of the neoclassical model. As will be discussed later,[106] the law often regulates bilateral or multilateral relationships outside the market so that the possibilities of strategic behavior or other group or "social" interactions can be important to many legal phenomena.[107] Moreover, legal punishments are sometimes intended to influence people's preferences with respect to certain behaviors, or in other words, to "socialize" people, and this purpose of punishment needs to be accounted for in models of the law.[108] Realism in the underlying assumptions of economic modeling of the law is paramount since most economic models of the law are explanatory rather than predictive, explaining or justifying

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101. Kalleberg, *supra* note 16, at 1214.

102. Charles Tilly, *Review Essay: Individualism Askew*, 96 AM. J. SOC. 1007 (1991).

103. Kalleberg, *supra* note 16, at 1215.

104. ETZIONI, *supra* note 52; SWEDBERG, *supra* note 3, at 328-38.

105. *See, e.g.*, POSNER, *supra* note 86.

106. *See infra* part III.B.3.

107. DOUGLAS A. BAIRD ET AL., GAME THEORY AND THE LAW 1 (1994); Robert C. Ellickson, *Bringing Culture and Human Frailty to Rational Actors: A Critique of Classical Law and Economics*, 65 CHI.-KENT L. REV. 23, 43-47 (1989).

108. Kenneth G. Dau-Schmidt, *Legal Prohibitions as More Than Prices: The Economic Analysis of Preference Shaping Policies in the Law*, *in* LAW AND ECONOMICS: NEW AND CRITICAL PERSPECTIVES 153 (Robin P. Malloy & Christopher K. Braun eds., 1995).

a certain legal doctrine on the basis of efficiency or social welfare analysis, rather than predicting changes in behavior based on potential changes in the law.[109] As a result, it would seem that there is a lot of potential for discourse between the two disciplines on law, and certainly a lot for economists to gain in consulting the theory and data of sociologists in constructing their theories on legal phenomena.[110]

B. The Benefits of an Interdisciplinary Discourse: What Economics Can Learn from Sociology in the Study of Law

As is the case in the prospects for an interdisciplinary exchange, the potential benefits from such an exchange are also probably greatest at the overlapping margins of each discipline. Each discipline has a legitimate and useful perspective, and it seems as unlikely that economists would find work in sociology so compelling that they would abandon their focus on individual rational choice as it would be that sociologists would forsake their more eclectic approach in favor of deductive rational choice modeling. However, it does seem useful that the rational choice perspective has been added to the consonance of the sociological debate.[111] From the economist's perspective, the work of sociologists can be useful in suggesting when and how to relax the assumptions of the neoclassical model in studying various phenomena. In this way, the work of sociologists can add more realism to the work of economists—realism that can be very important if the economic model is not purely predictive. Such guidance would seem particularly useful in subject areas that have only recently been subjected to economic analysis, such as the law.

But what can economists learn from sociologists about the study of law? What are the implications for the economic analysis of law of taking account of the fact that individuals are subject to a socialization process and act within the context of a certain culture? I would argue that there are three basic implications of sociology for the economic analysis of law: first, rational actors belong to groups; second, what is rational may be influenced by internalized norms of cooperation; and third, the law is part of the process for internalizing norms of behavior. I will now set forth

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109. Kenneth G. Dau-Schmidt, *Smoking in the Washroom of the Chicago School: A Comment on Crespi*, 22 LAW & SOC. INQUIRY (forthcoming 1997); Veljanovski, *supra* note 57, at 180-82.

110. As mentioned in my introduction, in this essay I will focus primarily on what economists can learn from sociologists in analyzing legal problems. *See supra* part I.

111. Others have argued that rational choice modeling can add more rigor and intellectual coherence to sociology by requiring sociologists to set forth tractable assumptions. Kalleberg, *supra* note 16, at 1216; Michael J. Piore, *Review of* The Handbook of Economic Sociology, 34 J. ECON. LITERATURE 741, 742 (1996).

those implications and attempt to give examples of how they can be important in the analysis of law.

1. RATIONAL ACTORS BELONG TO GROUPS

The first implication of sociology for the economic analysis of law is that rational actors are not always independent, but instead are members of groups and this fact may affect their behavior. Although treating people as independent actors may be adequate in modeling certain phenomena, there are some phenomena in which understanding the group interaction is essential to understanding the problem at hand. Robert Ellickson has written extensively about the importance of group interaction and informal means of control in understanding how people will or will not respond to legal rules.[112] However, the example that I think best demonstrates the potential importance of group interaction for the economic analysis of law is Richard McAdams' recent work on group status production and race discrimination.[113]

The traditional neoclassical economic analysis of race discrimination was first developed by Gary Becker.[114] Under this analysis, black employees suffer decreased employment opportunities and lower wages because white employers, employees and customers individually have a distaste for association with blacks, and as a result black productivity is discounted in the market by the amount of this distaste for association.[115] Discriminatory employers also suffer, however, in that they forgo more productive black workers and hire too few workers, decreasing their profits.[116] The policy implications of the neoclassical analysis are fairly straightforward—leave the subject alone since the market will discipline discriminatory employers and drive any

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112. Robert C. Ellickson, *Of Coase and Cattle: Dispute Resolution Among Neighbors in Shasta County*, 38 STAN. L. REV. 623 (1986); *see also* Eric A. Posner, *The Legal Regulation of Religious Groups*, 2 LEGAL THEORY 33 (1996); Eric A. Posner, *The Regulation of Groups: The Influence of Legal and Nonlegal Sanctions on Collective Action*, 63 U. CHI. L. REV. 133 (1996).

113. Richard H. McAdams, *Cooperation and Conflict: The Economics of Group Status Production and Race Discrimination*, 108 HARV. L. REV. 1005 (1995).

114. BECKER, THE ECONOMICS OF DISCRIMINATION, *supra* note 86.

115. *Id.*; GEORGE J. BORJAS, LABOR ECONOMICS 320-32 (1996). "Statistical discrimination" in which blacks suffer because, even though individual blacks might be as productive as whites, employers cannot perfectly predict prospective employees' productivity and blacks on average are less productive than whites, *id.* at 332-36, is also part of the "traditional" economic analysis of discrimination. However, statistical discrimination is not strictly neoclassical since it relies on imperfect information.

116. BORJAS, *supra* note 115, at 325.

unwarranted discrimination out of the market place.[117]

Although the neoclassical model has some predictive and explanatory power,[118] there are also serious limitations to the model. For one thing, the model predicts that discriminatory employers will be placed at a competitive disadvantage and will eventually be driven from the market.[119] Needless to say that if the market is the solution to discrimination, it seems to take a distressingly long time to solve the problem since the market has had well over one hundred years to work since the passage of the Thirteenth Amendment and discrimination is still with us today.[120] Moreover, in terms of explanatory power, the model describes discrimination as a distaste for association, when in fact, historically, discriminatory whites seemed to like to associate with blacks as long as the association was in the appropriate relationship, for example master/servant or employer/nanny.[121]

McAdams' analysis uses people's association with racial groups and the desire for intra- and inter-group status to explain racial discrimination. McAdams' focus on group interaction is, of course, sociological in nature, and in fact his analysis is heavily influenced by sociological work on discrimination.[122] According to McAdams' status production model, whites discriminate against blacks to lower black group status and raise white status relative to blacks.[123] Although disassociation is one way to lower another group's status, there are other ways including relegating the members of that group to subordinate positions when there is association.[124] Intra-group status or esteem is used by whites to compensate individuals for costs they incur in raising whites' group status relative to blacks, for example foregone profits due to disassociation from blacks.[125] The policy prescription of McAdams' model for civil rights

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117. *See, e.g.*, RICHARD A. EPSTEIN, FORBIDDEN GROUNDS: THE CASE AGAINST EMPLOYMENT DISCRIMINATION LAWS (1992).

118. For example, consumer taste has been used convincingly to explain a 10-13% price differential in the value of collector baseball cards depicting black and white athletes. Clark Nardinelli & Curtis Simon, *Customer Racial Discrimination in the Market for Memorabilia: The Case of Baseball*, 105 Q. J. ECON. 575 (1990).

119. John J. Donohue III, *Is Title VII Efficient?*, 134 U. PA. L. REV. 1411 (1986).

120. McAdams, *supra* note 113, at 1039-42.

121. *Id.* at 1036-39.

122. *E.g.*, *id.* at 1036-37 n.124 (citing GUNNAR MYRDAL, AN AMERICAN DILEMMA (1944)); *id.* at 1037 n.125 (citing JOHN DOLLARD, CASTE AND CLASS IN A SOUTHERNTOWN (1937)); *id.* at 1037 n.129 (citing KENNETH B. CLARK, DARK GHETTO (1965)).

123. *Id.* at 1044-45.

124. *Id.* at 1044.

125. McAdams, *supra* note 113, at 1046-48. The Jim Crow laws of the south also served to preserve white group status against individual defection. *Id.* at 1049-50.

legislation is quite different than that of the neoclassical model. To the extent that civil rights legislation discourages the wasteful investment in relative status competition between individuals and groups, it can promote efficiency and should be undertaken.[126]

McAdams' analysis seems superior to the traditional neoclassical analysis of discrimination both predictively and as an explanatory model.[127] The status production model includes no troubling prediction that the market will somehow cure discrimination on its own accord. Under McAdams' analysis, discrimination can continue indefinitely because of intra-group esteem "payments" to discriminatory individuals and the group status production value of racial bias.[128] Moreover, the status production model explains discriminatory whites' association with blacks, as well as who is likely to act discriminatorily and the past existence of Jim Crow laws. Discriminatory whites like to associate with blacks when blacks are in subservient roles because this sort of association reinforces white group status.[129] Consistent with empirical observation, the status production model predicts that low status whites would be the ones who would engage in the most virulent and visible forms of discrimination against blacks since they would be the persons most dependent on group status for individual self-esteem.[130] Finally, under McAdams' analysis, the Jim Crow laws of the South are explained as an effort by discriminatory whites to use the force of law to prevent "free-riding" on group status production by individual whites who might want to associate with blacks in a nondiscriminatory manner.[131] McAdams' model, based on group association and interactions, provides a much richer analysis of the phenomena of discrimination than that of the neoclassical model of the rational individual.

McAdams' analysis provides a variety of rationales for antidiscrimination legislation that are absent from the traditional neoclassical analysis. Under the status production model, the struggle for status is a zero-sum game in which whites benefit at the expense of blacks and resources are wasted both in undertaking discrimination and avoiding

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126. *Id.* at 1074-82; *see also* Richard H. McAdams, *Epstein on His Own Grounds*, 31 SAN DIEGO L. REV. 241 (1994) (McAdams' critique of Epstein's attack on antidiscrimination laws); Richard A. Epstein, *Standing Firm on Forbidden Grounds*, 31 SAN DIEGO L. REV. 1 (1994) (Epstein's rejoinder).

127. *But see* Richard A. Epstein, *The Status-Production Sideshow: Why Antidiscrimination Laws are Still a Mistake*, 108 HARV. L. REV. 1085 (1995) (Epstein's critique of McAdams' model).

128. McAdams, *supra* note 113, at 1064.

129. *Id.* at 1049.

130. *Id.* at 1053-56.

131. *Id.* at 1049-53.

it.[132] Described in this way, discrimination can be analogized to theft,[133] and one can object to discrimination either on the basis of the redistribution of status from blacks to whites, or merely on the basis of the waste of resources discrimination entails.[134] The analysis suggests that anti-discrimination laws can combat this redistribution and waste in three ways: by punishing and so deterring discriminatory acts; by increasing the racial diversity of socially connected groups, thereby decreasing status competition based on race; and by expressing public consensus on racial equality that undermines the credibility of rationalizations for discrimination.[135] These rationales can be used to promote and shape a variety of public policies against discrimination including equal access to education, housing and accommodations, integration of all public facilities and the repeal of all vestiges of the old Jim Crow laws.

2. WHAT IS RATIONAL MAY BE INFLUENCED BY INTERNALIZED NORMS OF COOPERATION

The second implication of sociology for the economic analysis of law is that rational actors may be influenced by internalized norms of cooperation. The internalization of these norms can cause a person to prefer the cooperative solution to various problems even when, from a purely self-interested perspective, the person's individual interest is not to cooperate. As a result, rational actors may sometimes cooperate for the collective benefit of the affected parties in situations in which an assessment of individual interests under the neoclassical economic model would suggest such cooperation is unlikely. Robert Ellickson, in his own essay on the potential insights of psychology and sociology for the economic analysis of law, has been the one to most persuasively make this argument.[136]

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132. *Id.* at 1074-76.

133. McAdams, *supra* note 113, at 1074-76.

134. McAdams follows the traditional economic approach of acknowledging the distributional effect of discrimination, but forsaking a judgment on that to focus instead on the inefficiencies of discrimination. *Id.* The basis for this traditional distinction goes back to the old positive/normative debate in economics and the argument that while economists can make a positive statement that theft and discrimination are inefficient because of the waste of resources they entail, it takes a normative judgment to condemn the redistribution of wealth or status that ensue from these activities.

135. *Id.* at 1028-82.

136. 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). Other important works on the potential importance of interdisciplinary insights in the economic analysis of law include John J. Donohue III, *Law and Economics: The Road Not Taken*,

Ellickson argues that there is much more cooperation among individuals in society than one would expect based on the individual rational actor model of neoclassical economics. Such cooperation affects economic exchange, social exchange and political behavior.[137] As an example of cooperative behavior in economic exchange, Ellickson poses the classic example of tipping in roadside restaurants.[138] From the neoclassical perspective, it is a bit puzzling why most people tip wait-persons they will never see again after the service has been provided and there is nothing individually to be gained from this action. Ellickson also cites empirical studies by Kahneman, Knetsch and Thaler suggesting that buyers and sellers refuse to do business with people they view as acting "unfairly" in their own self interest,[139] and a study by Hoffman and Spitzer suggesting that notions of "fairness" and "desert" can influence bargaining outcomes.[140] Examples of cooperative behavior in social exchange that Ellickson notes include donations to public television and the practice of returning lost articles to lost and found departments.[141] In political behavior, Ellickson notes that the fact people vote at all is curious from the neoclassical perspective since the expected benefits in terms of influencing the outcome of the election are almost zero, while there are substantial costs of voting in lost time.[142] Ellickson also argues that people often vote in accordance with civic-minded principles rather than just narrow self-interests,[143] for example, childless people who vote to support increased school funding.

Borrowing a page from sociology, Ellickson argues that people act in these selfless ways because society has acculturated them with norms for cooperation.[144] This process of acculturation proceeds for two

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22 LAW & SOC'Y REV. 903 (1988); Jason Scott Johnston, *Law, Economics and Post Realist Explanation*, 24 LAW & SOC'Y REV. 1217 (1990).

137. Ellickson, *supra* note 136, at 48-54.

138. *Id.* at 49.

139. *Id.* (citing Daniel Kahneman et al., *Fairness and the Assumptions of Economics*, 59 J. BUS. S285 (1986); Daniel Kahneman et al., *Fairness as a Constraint on Profit Seeking: Entitlements in the Market*, 76 AM. ECON. REV. 728 (1986)). "Unfairness" seems to be associated with opportunistic behavior in one's narrow self-interest—for example, raising the price of snow shovels after a blizzard. *Id.*

140. *Id.* at 48 (citing Elizabeth Hoffman & Matthew L. Spitzer, *Entitlements, Rights and Fairness: An Experimental Examination of Subjects' Concepts of Distributive Justice*, 14 J. LEGAL STUD. 259 (1985)).

141. *Id.* at 50.

142. Ellickson, *supra* note 136, at 51.

143. *Id.*

144. *Id.* at 45-46. Like McAdams, Ellickson relies on work by sociologists, but his work also is informed by work by psychologists and social-psychologists. *E.g.*, *id.* at 46 n.72 (citing WILLIAM DAMON, SOCIAL AND PERSONALITY DEVELOPMENT: INFANCY THROUGH ADOLESCENCE (1983)); *id.* at 46 n.73 (citing DEVELOPMENT AND

reasons. First, Ellickson argues that cultural institutions that promote cooperation are more likely to endure than cultural institutions that do not promote cooperation.[145] The rationale for this proposition is that since groups of people can sometimes benefit from cooperation, groups that develop the ability to cooperate through cultural institutions will outperform groups that do not and therefore displace them in a social evolutionary process.[146] Second, Ellickson argues that at some level, first-party systems of social control are cheaper to administer than third-party systems, and so it pays for society to invest in the internalization of cooperative norms.[147] In other words, in constructing a system of social control to promote or discourage various behaviors, for example, cooperation, it is cheapest for society to invest in promoting internalized values for the desired behaviors rather than just policing and fining or imprisoning transgressors.[148] A completely amoral mob with no acquired values is very costly to police.

Ellickson asserts that taking account of cultural norms in economic, social and political activities can improve both the positive and normative economic analysis of various legal problems. For example, Ellickson argues that by acknowledging norms of "fairness" in the marketplace one can gain a richer normative analysis of the problem of rent control.[149] Analyses of the doctrine of unconscionability and the implied covenant of good faith and fair dealing might also benefit from our accounting of norms in economic exchange. With respect to cultural norms in social exchange, Ellickson argues that taking account of norms for cooperation can aid in the analysis of the duty to rescue in torts, entitlements to restitution for unasked-for benefits, and the design of the welfare state.[150] Finally, Ellickson argues that with respect to political activity, the existence of norms for cooperation tends to undermine the traditional public choice analysis of the political process as a process of rent-seeking by purely self-interested actors.[151] Voters, politicians and judges may sometimes act in a civic-minded spirit for the "public good," with important implications for the analysis of the political and judicial

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MAINTENANCE OF PROSOCIAL BEHAVIOR: INTERNATIONAL PERSPECTIVES ON POSITIVE MORALITY (Ervin Staub et al. eds., 1984)); *id.* at 48 n.81 (citing HANDBOOK OF CHILD PSYCHOLOGY (Paul Henry Mussen ed., 4th ed. 1983)).

145. *Id.*

146. *Id.* at 46 n.71.

147. Ellickson, *supra* note 136, at 46.

148. Kenneth G. Dau-Schmidt, *An Economic Analysis of the Criminal Law as a Preference Shaping Policy*, 1990 DUKE L.J. 1, 22.

149. Ellickson, *supra* note 136, at 49-50.

150. *Id.* at 50.

151. *Id.* at 51-52.

processes and the First Amendment.[152] Although there is obviously much work to be done in studying cultural norms and applying this knowledge in the economic analysis of law, it seems hopeful that this endeavor will bear fruit on an variety of important topics.

3. THE LAW IS PART OF THE PROCESS FOR INTERNALIZING NORMS OF BEHAVIOR

The last implication of sociology for the economic analysis of law that I would like to discuss is the fact that law is part of the socialization process, and that sometimes legal policies are designed with the purpose to inculcate people with certain values. Because of their traditional assumption that preferences are exogenously determined or fixed, neoclassical economic analyses of law ignore this purpose and treat legal prohibitions as merely a "price" or tax on the prohibited activity. By taking account of the purpose of law to "socialize" people, or shape their preferences, the economic analysis of law adopts a more realistic set of assumptions with the result being a richer explanatory model. Although Cass Sunstein has done some analyzing of legal doctrines with the assumption of "endogenous preferences,"[153] I think my own work on the economic analysis of the criminal law as a preference-shaping policy best demonstrates the potential benefits of this line of analysis.[154]

As with discrimination,[155] the neoclassical economic analysis of criminal law was first undertaken by Gary Becker.[156] Under Becker's analysis, criminal sanctions are merely the "price" for crime.[157] Criminal sanctions should be set so that, in expected value terms, they equal the expected costs of the crime so that criminals will take account of these costs in deciding whether to engage in crime and commit only the "efficient" number of offenses.[158] Becker argues that fines and imprisonment are interchangeable for the purpose of punishing criminals and that fines should be preferred over imprisonment because they impose

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152. *Id.* at 50-54.

153. Cass R. Sunstein, *Endogenous Preferences, Environmental Law*, 22 J. LEGAL STUD. 217 (1993); Cass R. Sunstein, *Legal Interference with Private Preferences*, 53 U. CHI. L. REV. 1129 (1986); Cass R. Sunstein, *Preferences and Politics*, 20 PHIL. & PUB. AFF. 3 (1991).

154. Dau-Schmidt, *supra* note 108, at 153-80; *see also* Kenneth G. Dau-Schmidt, *Sentencing Antitrust Offenders: Reconciling Economic Theory and Legal Theory*, 9 WM. MITCHELL L. REV. 75 (1984).

155. *See supra* part III.B.1.

156. Becker, *supra* note 86.

157. *Id.* at 191-92.

158. *Id.* at 191.

fewer costs on society as a whole.[159] Becker's analysis also suggests that due to the costs of catching criminals, society should rely more heavily on large fines than strict enforcement in setting optimal expected penalties.[160] In other words, since the same optimal expected penalty can be achieved with high enforcement and moderate penalties or slack enforcement and high penalties, why not opt for the latter and save enforcement costs? Finally, Posner has extended Becker's analysis to argue that, in corporate crime, only corporations and never individuals should be held criminally liable.[161] Posner's rationale is that the corporation will more likely be able to pay a commensurate fine, thus avoiding costly imprisonment, and the corporation can effectively control the behavior of individuals by docking their pay or firing them.

As an explanatory model, this "price" theory of criminal law seems very problematic.[162] If the function of the criminal law is merely to price costly behavior, why is the doctrine of intent so central to the criminal law? If the only purpose of the criminal law is to make people take account of the costs they impose on others, why is it important that they intend to impose those costs?[163] Similarly, the punishment of attempts seems puzzling under this neoclassical analysis. If the purpose of the criminal law is to assess the criminal for the harm he has caused, why punish him when there is no actual harm?[164] Current sentencing

159. *Id.* at 193.

160. Dau-Schmidt, *supra* note 154, at 84. This conclusion relies on the assumption that criminals are risk averse. *Id.*

161. RICHARD A. POSNER, ANTITRUST LAW: AN ECONOMIC PERSPECTIVE 226 (1976); Richard A. Posner, *Optimal Sentences for White Collar Criminals*, 17 AM. CRIM. L. REV. 409, 417-18 (1980).

162. A number of law and economics scholars, besides myself, have described the neoclassical "price" theory of criminal law as inadequate. *See, e.g.*, Jules Coleman, *Crime, Kickers, and Transaction Structures*, *in* NOMOS XXVII: CRIMINAL JUSTICE 313 (J. Roland Pennock & John W. Chapman eds., 1985); Alvin Klevorick, *On the Economic Theory of Crime*, *in* NOMOS XXVII: CRIMINAL JUSTICE, *supra*, at 289, 290; Veljanovski, *supra* note 57, at 180-81.

163. Dau-Schmidt, *supra* note 148, at 25-26. Posner and Shavell have argued that intent is relevant under the price theory of criminal law because intent is correlated with probability of harm and likelihood of escape. Richard A. Posner, *An Economic Theory of the Criminal Law*, 85 COLUM. L. REV. 1193, 1221-29 (1985); Steven Shavell, *Criminal Law & the Optimal Use of Nonmonetary Sanctions as a Deterrent*, 85 COLUM. L. REV. 1232, 1248 (1985). However, they do not explain why probable, rather than actual, harm is relevant, since actual harm is the relevant concept in the economic analysis of tort law. Nor do they explain why the criminal law does not directly analyze probable harm and probability of escape, for example, punishing less severely criminals who commit crimes under circumstances in which they will be easily caught. Dau-Schmidt, *supra* note 148, at 26.

164. Dau-Schmidt, *supra* note 148, at 27-30. Posner and Shavell have argued that the punishment of attempts is consistent with the neoclassical model of criminal law

policy also escapes explanation. While culpable individuals are currently held liable for imprisonment, regardless of wealth, the neoclassical analysis suggests that only poor people who cannot pay a commensurate fine should go to jail and that corporate criminals should never be held personally responsible.[165] The unidimensional neoclassical analysis robs the criminal law of its moral character. Indeed, under this analysis it is hard to distinguish the criminal law from tort law and determine why we have a criminal law at all. After all, it is the tort law that economists have so convincingly argued is intended to assess to actors the costs they impose on other people. What additional function distinguishes the criminal law and gives it life?[166]

I would argue that the criminal law can be more usefully analyzed as a multi-purpose policy which is intended to discourage preferences for certain behavior as well as make that behavior costly.[167] In sociological terms, criminal punishment is part of the "socialization process" both for the punished individuals and for the members of society at large.[168] As

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because this is a low-cost method of raising the expected punishments of completed crimes. Posner, *supra* note 163, at 1217; Shavell, *supra* note 163, at 1250. However, they fail to explain why, if this is the optimal pricing solution in criminal law, the same doctrine is not applied in tort law. Dau-Schmidt, *supra* note 148, at 28.

165. Dau-Schmidt, *supra* note 148, at 30-32.

166. *Id.* at 32-37. Posner has argued that the criminal law exists to provide an added incentive to channel transactions from inefficient involuntary exchanges into efficient voluntary exchanges. Posner, *supra* note 163, at 1195-96. Becker has argued that the criminal law exists because not all criminals are caught and can afford to pay commensurate fines and so we need a law with imprisonment penalties in excess of actual harm in order to set optimal expected penalties. Becker, *supra* note 86, at 196. These explanations seem inadequate in several regards. First, the criminal law is used to discourage efficient voluntary transactions (prostitution, gambling, vote selling) as well as encourage them. Second, even if all criminals were caught and could pay large fines, would that really obviate society's interest in criminal punishment? Dau-Schmidt, *supra* note 148, at 34-35. As Coleman has argued the moral aspect of criminal law and the concept of culpability are not captured in this "inducement" theory of criminal law. Coleman, *supra* note 162, at 325.

167. Dau-Schmidt, *supra* note 148, at 21-22.

168. Like Ellickson's work, my work was informed by work in sociology and psychology, as well as behavioral theory. *E.g.*, *id.* at 38 n.76 (citing ROGER BROWN SOCIAL PSYCHOLOGY (1965); WOLFGANG GASTON FRIEDMANN, LAW IN A CHANGING SOCIETY (1959); JEAN PIAGET, THE MORAL JUDGMENT OF THE CHILD (Marjorie Gabain trans., 1932); William J. Chambliss, *A Sociological Analysis of the Law of Vagrancy*, 12 SOC. PROBS., Summer 1964, at 67). Additional work in sociology that I have found to have a direct bearing on my work in the economic analysis of criminal law include ICEK AJZEN & MARTIN FISHBEIN, UNDERSTANDING AND PREDICTING SOCIAL BEHAVIOR (1980); Harold G. Grasmick and Donald E. Green, *Legal Punishment, Social Disapproval and Internalization as Inhibitors of Illegal Behavior*, 71 J. CRIM. LAW & CRIMINOLOGY 325 (1980); Karl-Dieter Opp, *The Economics of Crime and the Sociology of Deviant*

previously mentioned,[169] in an optimal policy for social control it seems reasonable that society would engage in both pricing and preference-shaping activity in order to discourage bad behavior.[170] A person's preferences might be influenced if an activity is consistently condemned as morally bad by a figure of respect and authority, and this condemnation is reinforced with corporal punishment.[171] Although most preference shaping is done by a person's immediate family, friends and associates,[172] there is a need for a societal preference-shaping mechanism to reinforce these efforts and take over when an individual's associates themselves have deviant preferences.[173] To construct an optimal policy of social control, society should engage in both pricing and preference shaping to discourage bad behavior to the extent that the social benefits of these mechanisms outweigh their social costs.[174] Accordingly, the most costly preference-shaping methods, such as condemnation and imprisonment, will be reserved for use in those instances in which the social benefits of preference shaping are high because the preferences that are discouraged are for behavior that is not valued by society and which interferes with behavior by other members of society which is highly valued.[175]

This preference-shaping theory of the criminal law provides a superior explanatory model of many criminal law doctrines. The doctrine of criminal intent now makes sense, since it is only when someone intends, or prefers, that a harm occur that we know they have deviant preferences and must be punished for preference-shaping purposes.[176] Similarly, we punish attempts because, even though no actual harm has occurred, once a person has taken sufficient acts toward the completion of a crime, there exists sufficient evidence of deviant preferences to warrant punishment for preference-shaping purposes.[177] Moreover, under the preference-shaping theory fines and imprisonment are not commensurate penalties. Imprisonment is a more costly and more powerful preference-shaping mechanism reserved for culpable individuals who commit serious crimes.[178] Accordingly, it is not surprising that

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Behavior: A Theoretical Confrontation of Basic Propositions, 42 KYKLOS 405 (1989).

169. *See supra* part III.B.3 (first paragraph).

170. Dau-Schmidt, *supra* note 148, at 22-24.

171. *Id.* at 17-18.

172. *Id.* at 18-19.

173. *Id.* at 19.

174. *Id.* at 22-23.

175. Dau-Schmidt, *supra* note 148, at 21-22.

176. *Id.* at 26-27.

177. *Id.* at 28-29.

178. *Id.* at 20-21.

current sentencing practices require the incarceration of certain culpable individuals regardless of wealth, or that in corporate crime culpable individuals are punished rather than their firm.[179]

Finally, the preference-shaping theory of the criminal law provides a means of distinguishing criminal law from tort law and explaining the existence of criminal law. Criminal punishment is the most costly and serious form of social control. It subjects the individual to moral castigation and imprisonment and is undertaken only in cases of the most serious deviations from accepted behavior, when society has determined that the benefits of preference-shaping are great enough to exceed its costs.[180] Tort law is not reserved to these cases but is instead intended to compensate victims for harms they suffer and to give actors incentive for efficient behavior.[181] By taking account of the preference-shaping purposes of the criminal law, we once again gain some appreciation for the inherent moral character of the criminal law.

IV. CONCLUSION

Historically, economics and sociology have enjoyed a dynamic relationship, marked by episodes of positive exchange, indifference and outright hostility. During this century, the relationship of the two disciplines has largely been one of indifference as economists sought to transform the methodology of their discipline into that of a positive science and sociologists sought to achieve a unique subject matter to gain acceptance at major universities. The divergence of the two disciplines in methodology and subject matter posed an obstacle for useful exchange between the two disciplines because these segregations made it difficult for scholars to make use of work from the other discipline. However, there is reason to believe this period of indifference is coming to an end and that a new period of potential exchange is beginning. Recent work in economics and sociology shows substantial overlap in methodology and examined subject matter and thus the potential for useful exchange. The potential for useful exchange seems particularly strong with respect to subjects, such as law, which are not the traditional domain of economics and which may not always be well-explained by the traditional neoclassical economic model.

In the analysis of law, the work of sociologists may be useful in suggesting ways in which the assumptions of the traditional economic

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179. *Id.* at 31-32. Indeed, corporations have no preferences to shape except those of the corporate officers who commit crimes on their behalf.

180. Dau-Schmidt, *supra* note 148, at 35.

181. *Id.*

model should be relaxed in order to produce superior predictive and explanatory models. At least three such implications of sociology for the economic analysis of law seem readily apparent. First, it would seem important to take account of the fact that people are not always independent actors, but are members of groups, and that such membership can sometimes affect their actions. This fact seems particularly relevant in the analysis of the regulation of group-based activity such as racial discrimination. Second, people are inculcated with certain norms of cooperation, and these norms sometimes dictate actions that are not purely self-interested. The acknowledgement of such norms for cooperation may be important in the analysis of a wide variety of legal issues including the doctrine of unconscionability, the implied covenant of good faith and fair dealing, the duty to rescue, welfare programs and the voting behavior of citizens, politicians and judges. Finally, it is important to take account of the fact that the law is not merely a pricing mechanism, but is sometimes intended to "socialize" people and influence their preferences with respect to a particular activity. Taking account of the preference-shaping purpose of the law can be important in constructing an adequate explanatory model of certain legal doctrine, for example, the criminal law.

There is currently great potential for a useful interdisciplinary discourse on law between economics and sociology. Contrary to the suggestions of Charles Schultze,[182] economists have nothing to fear from engaging in such a discourse. Similarly, I would argue that, contrary to the assertions of Paul Hirsch et al.,[183] there is much to be learned from economic analysis and much that can be of use to sociologists in their work on various topics. Perhaps it is best to close with a quote by John Stuart Mill:

> It is hardly possible to overrate the value . . . of placing human beings in contact with persons dissimilar to themselves, and with modes of thought and action unlike those with which they are familiar. . . . Such communication has always been . . . one of the primary sources of progress.[184]

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182. *See supra* text accompanying note 1.

183. *See supra* text accompanying note 2.

184. SWEDBERG, *supra* note 3, at 3 (second deletion in original) (quoting JOHN STUART MILL, PRINCIPLES OF POLITICAL ECONOMY (1848)).