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Stefan J. Padfield

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SOCIO-ECONOMICS: CHALLENGING MAINSTREAM ECONOMIC MODELS AND POLICIES

*Stefan J. Padfield**

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I. INTRODUCTION

As one of the organizers of this Symposium on Law and Socio-Economics, I have been given the opportunity to provide some concluding remarks to round out this excellent collection of papers. Understanding that in our digital age I must assume that a reader may view this piece in isolation, I will begin by providing some background.

Socio-economics begins with the assumption that economic behavior and phenomena are not wholly governed or described by any one analytical discipline Drawing upon economics . . . and other disciplines, socio-economics regards competitive behavior as a subset of human behavior within a societal and natural context that both enables and constrains competition and cooperation. Rather than assume that the individual pursuit of self-interest automatically or generally tends toward an optimal allocation of resources, socio-economics assumes that societal sources of order are necessary for people and markets to function efficiently. Rather than assume that people act only rationally, or that they pursue only self-interest, socio-economics seeks to advance a more encompassing interdisciplinary understanding of economic behavior open to the assumption that individual choices are shaped not only by notions of rationality but also by emotions, social bonds, beliefs, expectations, and a sense of morality.

Socio-economics is both a positive and a normative science. It is dedicated to the empirical, reality testing approach to knowledge. It respects both inductive and deductive reasoning. But it also openly recognizes the policy relevance of teaching and research and seeks to be self-aware of its normative implications rather than maintaining the mantle of an exclusively positive science. Although it sees questions of value inextricably connected with individual and group economic

choices, socio-economics does not entail a commitment to any one paradigm or ideological position, but is open to a range of thinking that treats economic behavior as involving the whole person and all facets of society within a continually evolving natural context.

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

Another possible way of thinking about socio-economics is to reflect on the following quote from Peter Boettke:

[S]ocialist production would entail . . . a loss of efficiency. But the loss of efficiency and decline in general wealth [could] be accepted on the grounds of achieving a more just distribution of income. As [Friedrich] Hayek states, from an economic point of view if this choice is made in full realization of what is implied, then there is not much left for the economist to offer to the deliberation.²

Socio-economics may be understood to respond to this assertion in a number of ways. First, at least some socio-economists will challenge the proposition that a loss of efficiency involves a decline in general wealth. For example, Robert Ashford has written elsewhere that:

[T]aking the false posture of making a concession, some advocates of law and neoclassical economics readily agree that efficiency may be compromised by socially acceptable (e.g., democratic) means to serve other competing values, such as concerns for the needs of poor and working people that are not met with the operation of the assumed efficient market. This approach is seriously misleading because it ignores the facts that (1) maximizing efficiency does not necessarily or even probably maximize total societal wealth, (2) no measure of efficiency is independent of distribution, and (3) in the real-world inefficient markets, private, individual, group, organization, and government promotion of other values may increase total societal wealth by altering the distribution of wealth, irrespective of measures

1. Society of Socio-Economists (SOS), *Statement of Socio-Economic Principles*, <http://events.r20.constantcontact.com/register/event?llr=fikx5dkab&oeidk=a07ebzo4e39db97fd6e>.

2. Peter J. Boettke, *Economic Calculation: The Austrian Contribution to Political Economy*, 5 ADVANCES IN AUSTRIAN ECONOMICS 141 (1998).

of efficiency. In other words, the widely accepted choice between (1) wealth maximization (and its false proxy efficiency maximization), and (2) other values is a false dichotomy. And the wide acceptance of this false dichotomy proves to be seductively pernicious because (1) it falsely implies that the pursuit of values other than efficiency compromises efficiency (which is taken as synonymous with total societal wealth), and (2) it lulls generations of the critics of law and neoclassical economics into fruitless, no-win attacks on points of dispute that obscure, rather than highlight, the critical interests and needs of poor and working people.³

Second, the notion that “socialist” spending inevitably leads to general decline in wealth is not without historical evidence to the contrary. The internet, the micro-technology produced by the space programs, and the advances in understanding resulting from the genome project, taken together, are presently major contributors to a substantial increase in general wealth, and all were arguably funded by “socialist” production in an economic context in which the efficient allocation of resources based on market prices did not provide the incentives for private production.⁴

Finally, socio-economists stand ready to help fill the gap left by the economists who, according to Boettke, should be expected to step aside when the discussion turns to justice and fairness.⁵

3. Robert Ashford, *Using Socio-Economics and Binary Economics to Serve the Interests of Poor and Working People: What Critical Scholars Can Do to Help*, 8 SEATTLE J. FOR SOC. JUST. 173, 191 (2009). Cf. Roger Cowie, *Using Tax Incentives to Improve American Competitiveness: A Framework for Normative Analysis*, 31 AM. BUS. L.J. 417, 435-36 (1993) (“Unlike in a closed economy, the goal of economic efficiency in an open economy is not necessarily synonymous with the goal of maximizing domestic wealth. Indeed, economic efficiency may actually result in decreased domestic wealth for the U.S. For this reason, economic efficiency should not simply be equated with domestic wealth maximization. They are distinct concepts in an open economy which must be separately evaluated.”).

4. Cf. Mariana Mazzucato, *Economist Debunks One of the Biggest Myths About Government*, EVONOMICS (Mar. 5, 2016), <http://evonomics.com/economist-debunks-one-of-the-biggest-myths-about-governments/> (“The assumption that the public sector can at best incentivize private sector . . . fails to account for the many examples in which the leading entrepreneurial force came from the State rather than from the private sector.”); Gerald Friedman, *Why Liberal Economists Dish Out Despair*, INSTITUTE FOR NEW ECONOMIC THINKING (Apr. 20, 2016), <http://ineteconomics.org/ideas-papers/blog/why-liberal-economists-dish-out-despair> (“[B]y some combination of rationalization and the dominance of neoclassical microeconomics since the 1970s, liberal economists have virtually abandoned Keynesian economics, which supported the notion that governments can and must intervene in the economy to ensure the best results for society.”).

5. Cf. Erik Lundberg, *Award Ceremony Speech* (“The need felt by both [Gunnar] Myrdal and Hayek to expand the range of problems studied and the methodology applied is tellingly expressed in the following quotation from Hayek: ‘But nobody can be a great economist who is only an economist—and I am even tempted to add that the economist who is only an economist is likely to become a nuisance if not a positive danger.’”), <http://www.nobelprize.org/>

Accordingly, in the following pages I have broken the Symposium articles into three groups for review: (1) those that can be read as challenging mainstream economic models, (2) those that can be read as challenging mainstream policy conclusions, and (3) those that provide a good example of both. I do not claim to have applied these demarcations perfectly. More likely, each of the papers can be read to have something important to say about both economic modeling and policy. Nonetheless, I hope reviewing the Symposium articles in this way may be interesting and/or helpful to at least some readers.

II. CHALLENGING THE MAINSTREAM ECONOMIC MODELS

I have chosen the following two Symposium articles as good examples of using socio-economics to challenge the dominance of mainstream economic models. My review takes the very simple form of providing a short excerpt from the relevant article that will give the reader a sense of what the piece is about and hopefully encourage those who have not yet done so to read the entire article. As an aside, the relative length of any of the excerpts herein should not be viewed as indicative of comparative quality in any way. I typically believe less is preferable to more in these types of exercises, but there are many times when more is simply necessary. Nor should the ordering of the excerpts be viewed as any type of ranking other than representing the order in which I reviewed the pieces.

A. *Richard S. Markovits, The General Theory of Second Best and Economic-Efficiency Analysis: The Theory, its Negative Corollaries, the Appropriate Response to It, and a Coda on the Economic Efficiency of Reducing Poverty and Income/Wealth Inequality*⁶ (as summarized by Robert Ashford)⁷

Standard, “first best” economic-efficiency analyses ignore . . . reality. These “first best” analyses generate conclusions based on the assumption that, even in a world that will contain economic imperfections regardless of which policy-choice is made, policies that

nobel_prizes/economic-sciences/laureates/1974/presentation-speech.html; W. J. Ashley, *Introduction*, in *PRINCIPLES OF POLITICAL ECONOMY WITH SOME OF THEIR APPLICATIONS TO SOCIAL PHILOSOPHY* (Longmans, Green and Co., 7th ed. 1909) (noting “the distinction which Mill drew between the laws of the Production and those of the Distribution of wealth”), available at <http://www.econlib.org/library/Mill/mlP0.html>.

6. Markovits, 49 AKRON L. REV. 437 (2016).

7. Robert Ashford, “*The General Theory of Second Best*”—An Overview, 49 AKRON L. REV. 433 (2016).

reduce the number or magnitude of the imperfections in an economy will *always* increase economic efficiency on that account. That assumption is false. The General Theory of Second Best explains why conclusions that derive from that assumption are no more likely to be right than wrong—namely, because, in general, the imperfections that the policymaker can eliminate or reduce are as likely to compound as to counteract the distorting effects of the imperfections that remain.⁸

B. *Margaret F. Brinig*, Result Inequality in Family Law⁹

The neoclassical economics system assumes that individuals, acting on the basis of rational self-interest, will acquire the “perfect” knowledge needed to make decisions, that individuals will respond rationally to changes in “price,” that distributional consequences can be ignored in setting laws since losses can be made up through taxes and transfer payments, and that it is enough that parties theoretically could compensate third parties for their losses out of the gains from choices they make. None of these assumptions holds particularly true in the complex systems of families, as the data will show.¹⁰

III. CHALLENGING THE MAINSTREAM POLICY RECOMMENDATIONS

I believe the following five pieces from the Symposium represent, at least in terms of the excerpts I have chosen, valuable applications of socio-economic analysis to mainstream policy recommendations in a variety of areas. What should not be missed is that these socio-economic policy arguments may rely on very mainstream evidence, be it theoretical or empirical, in order to point out where mainstream policy makers have conveniently ignored such evidence. Again, hopefully the reader who has not yet done so will be sufficiently intrigued to follow-up with one or more of the full articles.

A. *The Honorable Guido Calabresi*, Values and the Law: 2010 AALS Annual Meeting Luncheon Keynote Address¹¹

Law changes values [A]ssume a society that wants a larger pie that is more equally distributed, and is also one in which people desire to be creative. If you allow me just these three values, “more,” “more equal,” and “creativity,” I can immediately tell you all sorts of

8. *Id.* at 435.

9. Brinig, 49 AKRON L. REV. 471 (2016).

10. *Id.*

11. Calabresi, 49 AKRON L. REV. 311 (2016).

secondary values that lead to a greater joint maximization of the three basic values. Anything that allows people to be creative in a non-scarce way, that allows a whole lot of people to be creative, will result in a greater joint maximization of these three fundamental desires. So handicraft, popular art, singing in the shower, if they are valued, will contribute to achieving a higher level of our more basic values To the extent that our society emits laws furthering these values, thereby prizing people who are creative in non-scarce ways, we will have a pie that is bigger and more equally distributed, by allowing more people to be creative.¹²

*B. Terry O'Neill, What Does the Minimum Wage Have to Do with Reproductive Rights?*¹³

Women's rights advocates . . . are well advised to lift up the minimum wage as a vehicle for helping to advance the goal of women's equality—both because it plays an important role in narrowing the gender and gender-race wage gaps and because low-wage women workers must rely on their cash wages in order to have access to their constitutionally-protected right to contraception and abortion care.¹⁴

The obverse is equally important: advocates for workers and working families are well advised to lift up women's reproductive rights as an essential part of helping to advance the economic interests of workers. Women, who comprise nearly half the workforce in the United States, have become the constituents of workers' rights organizations on an equal footing with men. In fact, women are the sole or primary breadwinners in approximately 40% of all U.S. households, and women's wages are an essential part of their family's finances in more than half of U.S. households. To meet their obligations as workers and providers for their families, the imperative for women to be able to control their reproductive lives is as important as the imperative for women's livable wages and pay equity.¹⁵

. . .

Women's and workers' rights organizations were also united in condemning the Supreme Court's decision in *Burwell v. Hobby Lobby* Considering the decision purely from the perspective of women's health, advocates rightly decried giving employers a green light to use religion as an excuse to withhold basic health care from

12. *Id.* at 312, 314.

13. O'Neill, 49 AKRON L. REV. 319 (2016).

14. *Id.* at 323.

15. *Id.* at 323-24.

their female employees.¹⁶

...

The *Hobby Lobby* decision was equally deplorable, however, from the perspective of women as workers. In effect, the Supreme Court majority allowed employers to reduce their women employees' compensation packages in the name of their professed Christian beliefs.¹⁷

C. *George Shepherd*, Homeschooling's Harms: Lessons from Economics¹⁸

Proponents of various forms of school choice—including not only homeschooling, but also vouchers, charter schools, private schools—often attempt to support their arguments by using economic analysis. They argue that the competition from school choice will cause public schools to improve. I show, to the contrary, that economics reveals that homeschooling and school choice will harm public schools.

First, I focus on economic theory. Economic theory suggests that homeschooling and other forms of competition with public schools would be expected to make the public schools worse, not better. Unfettered competition should be expected to lead to the inefficient destruction of the public schools. The competition will harm all students in public schools, including the underprivileged. This is so for four theoretical reasons. First, public education is a public good. Second, public education enjoys network externalities. Third, in many communities, permitting people to opt out of public education will harm public schools because of adverse selection. Fourth, allowing competition creates a harmful prisoner's dilemma that creates a worse equilibrium than if competition were prohibited.

Using empirical evidence, I then confirm that the economic theory is correct.¹⁹

D. *William K. Black and June Carbone*, Economic Ideology and the Rise of the Firm as a Criminal Enterprise²⁰

White-collar criminologists, as this Article explains, consider the policies recommended by neo-classical economic theories to be a

16. *Id.* at 325-26.

17. *Id.* at 326.

18. *Shepherd*, 49 AKRON L. REV. 339 (2016).

19. *Id.* at 340.

20. *Black & Carbone*, 49 AKRON L. REV. 371 (2016).

leading cause of criminogenic environments. The views of criminologists are the polar opposite of the dominant stream of economists on the corporate debate. The paradox is that economists and criminologists make the same core assumption of generally self-interested conduct and generally rational behavior by corporate officers and employees—yet end up reaching the opposite conclusions.²¹

*E. Richard Gershon, The Socio-Economics of the Federal Estate Tax: Why Do So Many People Hate (or Love) This Centenarian?*²²

[T]here are good arguments in favor of the tax that serve no interest other than what is fair and effective.

The tax is projected by the Congressional Budget Office to produce \$246 billion in revenue from 2016-2025. All of this revenue would come from the wealthiest estates. Repeal of the tax would require replacement of that revenue through other taxes or budget cuts. Cuts to programs often have a disparately negative affect on the poor, who rely on those programs to a much greater extent than the wealthy.

Furthermore, because the estate tax is designed to tax only the highest value estates, it is a very progressive tax, paid by those who have benefited most from living in this country. Many wealthy people understand and appreciate that their fortunes were built because of the opportunities they, and their families, had living in the United States. In fact, when I suggested estate tax planning devices to a wealthy client, he stated that his children would have plenty, and that he was privileged enough to be in a position to owe the estate tax. He was proud to give something back to his country.²³

IV. CHALLENGING BOTH THE MAINSTREAM ECONOMIC MODELS AND POLICY RECOMMENDATIONS

In this last section before my concluding remarks, I highlight Professors Harrison and Ashford's Symposium submissions as good examples of how a socio-economist can take on both theory and application at the same time. Parts A.1 and B.1 contain model-focused excerpts, while Parts A.2 and B.2 contain policy-focused excerpts. As stated above, my decision to organize the Symposium Articles in this way should not be taken to suggest that the other pieces could not just as easily be included here.

21. *Id.* at 376.

22. Gershon, 49 AKRON L. REV. 329 (2016).

23. *Id.* at 337.

A. *Jeffrey L. Harrison, A Socio-economic Approach to Antitrust: Unpacking Competition, Consumer Surplus, and Allocative Efficiency*²⁴

1. Challenging Models

It is important to recall that demand requires that people be *willing and able* to purchase an item. A need, even the severest need, is not reflected on the demand curve if it is not manifested by people with dollars to spend. Thus, quite literally, it may be more “efficient” to produce yachts than it is to provide prenatal care for poverty level expectant mothers.²⁵

...

[T]here are some things we know. First, the neoclassical model of consumer surplus is only remotely connected to actual consumer well-being. Second, . . . some demand is the result of addiction.²⁶

...

Consumer surplus, demand, and supply all come into play when considering allocative efficiency. The principal focus is on the supply or cost side of the equation And, to some extent the socioeconomic message here may be that courts are *not* applying simple economics [I]t is unlikely that any antitrust court in an antitrust opinion is guided by actual costs.²⁷

...

At its most basic and obvious level, the two antitrust goals [of maximizing consumer surplus and allocative efficiency] cede to those with income—earned or not—the right to determine how scarce resources are used. That may be fine in many respects and may be far superior to any other method. The problem is that consumer surplus is under-inclusive, recognizes only a small universe of values, and falls well short of measuring actual well-being. When the focus is on allocative efficiency and costs of production, antitrust courts and enforcement agencies are unlikely to recognize all costs and can perpetuate a race to exploit. To the extent the race to exploit is repugnant to some, they may be able to express that in markets but

24. Harrison, 49 AKRON L. REV. 409 (2016).

25. *Id.* at 418.

26. *Id.* at 428.

27. *Id.* at 430.

only to a limited extent.²⁸

2. Challenging Policies

Caution about a socio-economic approach may arise from the sense that it is difficult to measure some of the values of socio-economics. This is not a reason for ignoring them. The approach is inconsistent with what routinely goes on within the public policy realm. It is a necessary step in discovering the best decision, whatever the goal.²⁹

...

This may introduce some normativity and subjectivity into the assessment of consumer surplus. However, the decision to treat [as equal] all forms of consumer surplus—whether from conspicuous consumption, addiction, or lifesaving medical treatment, all of which consume scarce resources—is no less normative and far more questionable. It is a decision to cede to those with money the control of how resources are allocated, often without regard to actual welfare.³⁰

...

[W]hen the merits of allocative efficiency are discussed, the fact that it may entail finding the neediest providers of inputs and exploiting them to the fullest, is rarely, if ever, discussed. In fact, a question that needs [to be] considered is whether antitrust policy should create incentives to find labor markets where working conditions are the poorest. Perhaps the answer is yes, but socio-economics provides a way to pierce the notion of efficiency and to expose [the reality of] the “cost” of always seeking to lower costs.³¹

B. *Robert Ashford, Why Working But Poor? The Need for Inclusive Capitalism*³²

1. Challenging Models

In considering the accumulating wealth of nations that [Adam] Smith was trying to explain in 1776, and in explaining the far greater accumulation of wealth that has continued to the present day, the work . . . capital has done (and continues to do) far more than . . . substitute[s] for the work of labor. In reality, the work of capital not

28. *Id.* at 431-32.

29. *Id.* at 427.

30. *Id.* at 429.

31. *Id.* at 430.

32. Ashford, 49 AKRON L. REV. 507 (2016).

only substitutes for, but also vastly supplements, the work of labor by doing ever more of the work.³³

. . .

It is no less true in an economy of billions of people, than on Robinson Crusoe's island, that work (i.e., production) *is* income, whether done by labor or capital. Accordingly, capital works on both sides of the production–consumption economic equation by providing vastly increased:

- (1) productive capacity and production, and
- (2) capacity to distribute income and leisure.

The recognition that (1) technology makes capital more productive than labor in task after task and (2) production *is* income reveals that one important effect of technological advance is to ever increase the direct contribution of capital to production and the distribution of income.³⁴

2. Challenging Policies

[I]f one adopts the binary view that with technological advance, capital is doing ever more of the work and capable of distributing even more of the income, then whether the distribution of capital acquisition, and therefore ownership and income, is broadened or remains concentrated becomes an increasingly important factor in promoting or suppressing both (1) broader income distribution to poor and middle class people; and (2) economic growth.³⁵

As long as the conventional productivity view goes unchallenged, the mainstream approach will continue to assume that the gains from technological advance for most people must come in the form of more jobs and higher wages, lower prices for goods and services, and welfare payments derived from redistributing the labor and capital income of others [B]inary economists, on the other hand, see far greater potential gains for poor and middle class people by enabling them . . . to supplement their gains resulting from wages, lower prices, and welfare, by adding to their participation in the economy via capital acquisition with the earnings of capital just as well-capitalized people routinely do.³⁶

33. *Id.* at 514.

34. *Id.* at 514-15.

35. *Id.* at 515.

36. *Id.* at 515-16.

V. CONCLUSION

I hope this brief review of the Symposium Articles has provided a useful additional perspective to those who have read the articles, as well as an independently interesting overview for those who have not. At a time when many people are questioning the ability of our current system to provide economic justice,³⁷ the Socio-Economic perspective is particularly relevant to finding new solutions and ways forward. Accordingly, I want to leave you with the following excerpt, written by Professor June Carbone, from a prior symposium on socio-economics:

I found in teaching a course on women, law, and technology . . . that my students started with simplistic assumptions about the relationship between law, government, and society. Give them a problem—new reproductive technologies, the glass ceiling in Silicon Valley—and they reflexively assume that government intervention would provide a solution. Conversely, present the same issue to colleagues or other students steeped in law and economics, and they assume almost as automatically that markets provide outcomes that are either normatively appropriate or inevitable. To unpack these assumptions, indeed, to have a class discussion that goes beyond polarized responses, requires a framework for analysis.

Socioeconomics provides that. Law and economics, based on the rational actor model, provided a relatively simple (so long as one eschewed the math) analysis that could be incorporated into almost every law course. Today, however, the law and economics paradigm includes a variety of different approaches that incorporate increasingly complex debates about the role of institutions in mediating individual responses and the use of cognitive psychology and game theory to provide more robust models of human behavior. Socioeconomics goes beyond the limits of economics itself to recognize not only these heterodox economic approaches, but also the value of a broad range of other disciplines in explaining, predicting, and evaluating human institutions and behavior.

This Symposium provides examples of how the insights provided by

37. Cf. John Bellamy Foster & Michael D. Yates, *Piketty and the Crisis of Neoclassical Economics*, 66 MONTHLY REVIEW 6 (2014), <http://monthlyreview.org/2014/11/01/piketty-and-the-crisis-of-neoclassical-economics/> (“Accompanying the long-term decline in the growth trend has been an extraordinary increase in economic inequality, which one of us labeled ‘The Great Inequality,’ and which has recently been dramatized by the publication of French economist Thomas Piketty’s *Capital in the Twenty-First Century*. Taken together, these two realities of deepening stagnation and growing inequality have created a severe crisis for orthodox (or neoclassical) economics.”) (citing THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* (Cambridge: Harvard University Press, 2014)).

socioeconomics can be incorporated into courses across the curriculum.³⁸

38. June Carbone, *Introduction: Teaching Socioeconomics*, 41 SAN DIEGO L. REV. 1, 1-2 (2004).