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Economic Imperialism in Law and Economics

Magdalena Małecka
TINT – Centre for Philosophy of Social Science,
University of Helsinki, Helsinki, Finland

Definition

Economics imperialism is a type of an interdisciplinary relation between the scientific discipline of economics and other disciplines of the social sciences. The disciplines that are often claimed to be “imperialized” by economics are sociology (see Granovetter and Swedberg 2001; Swedberg 1990), political science (see Hodgson 1994; Sigelman and Goldfarb 2012; Kuorikoski and Lehtinen 2010), anthropology (see Marchionatti and Cedrini 2016), geography (see Mäki and Marchionni 2010), and law (see Medema 2018; Davies 2010; Fink 2003). Hence, the law and economics movement is seen by some as one of the manifestations of the imperialism of economics in the social sciences (in this case – in legal scholarship). Below, I review the general debate on economics imperialism, and then I discuss the attempts to analyze law and economics as a case of economics imperialism.

Introduction

Recently, in the philosophy of science literature there is a discussion on scientific imperialism, of which economics imperialism is just an instance. This debate has revolved around the question of the permissibility of the application of scientific theories and methods outside the discipline in which they were initially introduced. Philosophers of science have attempted to clarify what it means for a theory or a discipline to be applied outside its own field or domain, and whether such an application can be understood as imperialistic (Dupré 1994, 2001; Mäki 2013; Clarke and Walsh 2009; Kidd 2013; Clarke and Walsh 2013; contributions to the volume edited by Mäki et al. 2017). It is debated whether scientific imperialism is a neutral or normatively loaded term, how to establish criteria for assessment of imperialistic practices in science, how to categorize different instances of scientific imperialism, as well as whether the political metaphor of imperialism is useful at all in order to account for relationships between scientific disciplines. Mäki et al. (2017) argue that scientific imperialism challenges two central tenets of current scientific practice, as it calls into question two widely spread ideas: (1) that the broader the scope of a scientific theory, the better; (2) that interdisciplinary exchanges bring indisputable benefits (p. 1).

The term “economics imperialism” has been used in the pejorative sense by the critics of the idea of applying economics outside its domain

(Fine and Milonakis 2009; Davis 2015; Hodgson 1994; Nik-Khah and Van Horn 2012) and in the approbatory sense by some economists (most notably by Becker 1971; Hirshleifer 1985; Stigler 1984; Lazear 2000; Radnitzky and Bernholz 1987; Tullock 1972) who have advocated the idea of expanding economic theories and methods to the topics studied by the less advanced, in their opinion, social sciences. “Economics imperialists” have argued that such an expansion is justified by economics’ “growing abstractness” and “generality” that economics achieves thanks to “the machine of maximizing behavior” (Stigler 1984); by the universal applicability of economics’ analytical categories (Hirshleifer 1985); and by economics’ intellectual rigor (Lazear 2000; Posner 1989). Moreover, Mäki (2009) emphasizes that the expansion of economics has been often justified in terms of the ideal of unification – economics is supposed to provide, in the opinion of “imperialists,” a unifying theory for the social sciences. Fine and Milonakis (2009) claim that the theoretical development in economics that made the expansion of economics possible was the marginalist revolution and its basic concepts of equilibrium (see: ▶ “Equilibrium Theory”), rationality (see: ▶ “Rationality”), scarcity – “universal in content and application” (p. 8).

87 Criticism of Economics Imperialism

88 However, critics of economics imperialism, apart
89 from questioning the alleged advancement of econ-
90 omics as a social science, often point out the
91 importance of non-epistemic arguments and non-
92 academic standing of economics for the successes
93 of its imperialistic scientific practices. For
94 instance, Nik-Khah and Van Horn (2012) claim
95 that economics imperialists of the Chicago School
96 wanted in the first place to influence policy
97 approach by proposing their view on what consti-
98 tutes the economic analysis of state policy.
99 “Stigler’s program to study ‘governmental control’
100 constituted a new and distinct approach,
101 rather than mere application of a core Chicago
102 approach to a new domain” (p. 217) (see:
103 ▶ “Stigler”). Amadae (2018) stresses the

104 importance of politically motivated expansion of
105 the rational choice theory – its attractiveness for
106 nuclear deterrence made it prestigious in non-
107 academic contexts and in this way has strengthened
108 its standing within academia as well. In this context
109 the affinities of the Chicago School analysis with
110 neoliberalism are often emphasized. Nik-Khah and
111 Van Horn (2012) claim that economics imperialism
112 cannot be really understood if one does not take
113 into account the Chicago School economists’
114 involvement into the revival of the liberal project,
115 known as neoliberalism – redefinition of the social
116 and the political sphere through the concepts of
117 neoclassical economics – and its impact on the
118 real-world policy design. Therefore, partly in
119 response to this “performative” aims of the Chi-
120 cago School (Davis 2015), or “pedagogical” effects
121 of the rational choice theory (Amadae 2018), some
122 critics of economics imperialism have argued that
123 the conceptualization of social relationships
124 through the categories of neoclassical economics,
125 or of rational choice, is inherently inadequate (Fine
126 and Milonakis 2009) and can lead to ethically
127 objectionable large-scale sociocultural conse-
128 quences (Marino 2018) by influencing agents’
129 self-understanding (Clarke and Walsh 2009).

130 Is All Economics Imperialistic?

131 It should be noticed, however, that upon inspec-
132 tion we find out that economics imperialism, as
133 each instance of scientific imperialism, is in fact a
134 relationship between smaller epistemic units than
135 scientific disciplines (Davis 2015; Małecka and
136 Lepenies 2018; Chassonnery-Zaïgouche 2018).
137 The analysis of cases of economics imperialism
138 makes it clear that it is never the case that the
139 *whole* discipline of economics is “imperializing,”
140 e.g., the *whole* sociology. Thus, as Davis (2012)
141 argues, “economics is not all economics” (p. 210).
142 It is usually a particular research program that
143 develops within the discipline of economics and
144 which is being transferred outside, as well as
145 within, economics’ institutional borders.

146 In contemporary discussions, it is often
147 claimed that only neoclassical economics, and
148 more specifically the Chicago School and its

price theory, are extended to other domains and scientific fields (Davis 2015; Nik-Khah and Van Horn 2012). However, Amadae (2018) argues that it is in fact not the neoclassical economics with its formalization of diminishing marginal utility, what constitutes economics imperialism, but rather the game theory with its view on agency as strategic competition between actors who satisfy their preferences. Guilhot and Marciano (2018) complicate the picture by showing that what is now called the economics imperialism in political science was the application of the rational choice theory to the questions of the political decision-making: it was possible rather due to the rising importance of the decision theory across the social and behavioral sciences after the Second World War. Furthermore, few researchers emphasize that some of the economic approaches, or research programs that we consider imperialistic today, were in fact quite marginal within economics, back in the days. Becker's (see ► "Becker") application of rational choice and price theory to the analysis of social phenomena is one of the examples (Chassonnery-Zaïgouche 2018; Vromen 2009). Chassonnery-Zaïgouche (2018) analyzes economic studies of discrimination and claims that Becker influenced, imperialized, with his work mainly the discipline of economics and has had, in fact, marginal impact on other social sciences studying discrimination.

Despite the seemingly intuitive appeal of the term "economics imperialism," it is not clear what does it mean that one research program is imperializing another, or other. Economics imperialism has been defined, for instance, as "colonisation of the subject matter of other social sciences by economics" (Fine and Milonakis 2009), as "a form of economics expansionism where the new types of explanandum phenomena are located in territories that are occupied by disciplines other than economics" (Mäki 2009), or as "the attempt to extend the core ideas of neoclassical economics to cover social science as a whole" (Hodgson 1994). Most of the definitions account for the metaphorical use of the notion of imperialism as we know it in political context. There is a discussion, however, to what extent the metaphor of

imperialism should be taken seriously when talking about scientific practices. The notion of imperialism is normatively loaded and most scholars believe that one cannot ignore this normative dimension in the case of economics imperialism (Mäki 2013, who defines scientific, and economics, imperialism neutrally, is an exception here). Małecka and Lepenies (2018) provide the definition of scientific imperialism, that applies to economics imperialism, in which they account for the widely shared believe that there is something normatively problematic about economics imperialism. They stress the importance of epistemic and non-epistemic factors for being able to define and identify economics imperialism. Scientific imperialism is an activity that is related both to a certain view on the progressive character of a novel application of an existing research approach (the epistemic aspect) and to a power to favor this approach at the expense of other approaches in terms of academic and nonacademic prestige, or/and resources (the institutional aspect).

Law and Economics as an Instance of Economics Imperialism

Law and economics is often seen as a result of the expansion of the Chicago School approach to law (Mercurio and Medema 2006; Medema 2015, 2018). Sometimes it is understood, more broadly, as an application of orthodox, or neoclassical economics (Jackson 1984; Davies 2010), or of game theory (Pearson 1997) to law (see ► "Game Theory Applications to Law"). Mercurio and Medema (2006) even argue that law and economics "has been the most successful of economists' imperialistic forays into other disciplines" (p. 100).

The application of the price theory to the analysis of law is grounded on the premise that individuals are rational maximizers of their utility, that they respond to price incentives also in non-economic settings and that law can be treated as an incentive. Medema (2015) stresses the importance of Gary Becker's (see ► "Becker") works that advanced the analysis of all social phenomena with the tools of price theory (and econometrics) for the development of economic analysis of law.

242 Medema (2015) differentiates this “new” law and
 243 economics, inspired by the work of Becker, as
 244 well as of Richard Posner (see ► “Posner”),
 245 from the “old” one, initiated by Aaron Director
 246 (see ► “Director”), whose aim was to simply ana-
 247 lyze the impact of legal rules on economic perfor-
 248 mance. According to Medema only the “new” law
 249 and economics has features of scientific
 250 (economics) imperialism (compare also Epstein
 251 1997 on periodization of law and economics and
 252 Harnay and Marciano (2009) on the difference
 253 between law and economics and economic analy-
 254 sis on law).

255 Posner (1989) justifies the application of neo-
 256 classical economics to law by the rigor that this
 257 type of economic analysis allegedly offers, as well
 258 as by the possibility of funding the truly “scien-
 259 tific” analysis of law in this way. Cooter (1981)
 260 points out that the reason for the economics impe-
 261 rialism in law is the “discovery” by economists a
 262 niche in legal scholarship – a lack of quantitative
 263 reasoning. Cooter (1995) also emphasizes the
 264 importance of an attempt for unification for apply-
 265 ing economics to law.

266 The historical case study made by Medema
 267 (2018) on the ad hoc Joint Committee of the
 268 American Economic Association and the Associ-
 269 ation of American Law Schools established in
 270 1966 to explore the prospects for interactions
 271 between lawyers and economists challenges the
 272 commonly spread narrative about neoclassical
 273 economists conquering a new field. The study
 274 demonstrates that lawyers played a crucial role at
 275 the early stage of bringing economics to their
 276 studies and in replacing “the traditional methods
 277 of legal analysis” (Medema 2018, p. 110). How-
 278 ever, later on the application of neoclassical eco-
 279 nomics to law had been opposed by some lawyers
 280 as being too abstract an analysis, untested, irrele-
 281 vant to the courtroom (Cooter 1981). Law and
 282 economics as a scientific project of explaining
 283 legal phenomena has been also scrutinized and
 284 criticized. For instance, Jackson (1984) criticized
 285 law and economics’ scientism and its technocratic
 286 attitude that made it so dominant in the legal
 287 scholarship. For other critics law and economics
 288 is mainly a manifestation of “the neo-liberal pro-
 289 ject of applying neo-classical economics to state

sovereignty” (Davies 2010, p. 64) that has been
 advanced by non-epistemic arguments and nor-
 mative views on policy as complying with the
 goals of economic efficiency (Davies 2010; Fink
 2003).

Cross-References

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- Equilibrium Theory 297
- Posner, Richard 298
- Rationality 299

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