

FRINGE LAW & ECONOMICS

SUMMARY

Fringe science is defined as scientific inquiry in an established field of study that departs from mainstream or orthodox theories, and is classified in the "fringes" of a credible mainstream academic discipline. If there is a common denominator of some of the results of my last three years of research, that common denominator is being fringe law and economics.

Fringe for the use of unorthodox economic paradigms - such as Austrian Economics - or for the uncommon application of Public Choice or Institutional Economics to more traditional law and economics issues. But fringe also because I have had the ambitious interest of inquiring whether mainstream analytical tools, regulatory theories do hold also at the margin of our discipline, whether the technological or institutional is radically different from the context in which those models originated.

Google, Competition Law and the Hegel Owl

My first paper deals with the theoretical questions - begging a ending in courts - of the landmark case of our decade. But it more broadly deals with the problem of antitrust enforcement in highly dynamic, innovative digital markets, whose structure and business models we do not completely understand and yet we assume to be able to stir toward a greater efficiency. Stealing a metaphor from Hegel, I wanted to know if the Owl of economic theory, which backs up regulation, knows where to fly in the daylight of economic transformations in the digital markets. Digital markets characterized by digital goods, whose price is zero or close to zero, network effects, magmatic experimentation of business models, winner-takes-it-all victories and, at the same time, an hyper-Schumpeterian pace of creative destruction among Titans.

My follow up question, on the issue is whether behavioral economics can help us better understand markets dynamics, frame and detect abuses and draft remedies. Indeed, while behavioral economics has become exceptionally popular and advocated by

many as the next paradigm to ground antitrust inquiries there has been little or no application of it in actual enforcement. If the Google saga is such a crucial case for determining antitrust boundaries in the next decade, I've found peculiar not to find much literature about how to use behavioral economics to understand it, and I've tried, indeed with no much success, to use it as a counterpart to Chicagoan and Austrian economics.

I've found out that behavioral economics has very limited practical use in the three steps required for assessing dominance, because it gives contradictory results for defining the market, the credible threat and assessing the role of the consumer. It particularly underestimate the role of decreased costs of information and switching cost in the internet. By reviving a discredited theory in antitrust, the theory of leverage, without any univocal results, behavioral economics can give very little new insights about the specific abuses Google might be charged of, refusal to supply or tying. On the other hand, while not free from negative consequences, behavioral economics can indeed provide some useful suggestion for drafting remedies. A "nudging" opt-in opt-out remedy can be more effective than fines, and less aggressive than structural remedies, but even in this case it will lower pace of innovation and the quality experienced by the consumer.

Competition Law in Developing Countries - India, a case study

The second paper I present deals with the issue of the transplant of competition law in countries whose economic and system is radically different from the one in which competition law was generated. And a contest in which the mainstream theory that laid the grounds for competition law has proven itself to be particularly unsuccessful in explaining growth - or better, the lack of it. In the last years 102 countries have adopted competition law in their jurisdictions, even though it was not consistent with their general policy about the market and even though they opposed it during the multilateral negotiation in the Doha round. This happened because developed countries pushed it as a conditional clause in their trade agreements. But while there is no uncontroversial evidence that competition law has positive or negative effects on growth, not even for developed countries, there are structural and historical conditions that make this transplant more difficult in developing ones. I resorted to Neo-institutional, Austrian and Public choice economics to better assess the variables that

will affect a poor quality of antitrust enforcement, and how it will have a marginal negative effect on developing economies. First of all, developing countries have weak legal systems, with limited ability to enforce contracts and property right. This requires for the firms to operate more flexible organizational solutions, but those risk to be found false positives when the antitrust enforcement is not sophisticated, as in a legal system with scarce resources. In the second place, Developing Countries are facing a gradual transition to an open market economy, and gradual transition create a lot of space for political manipulation and rent seeking. Rent seeking and cartelization are alternative inputs for obtaining a rent, and the introduction of antitrust, with weak institutions, decreases the cost of rent seeking by increasing the cost of cartelization. Thirdly, developing countries have a high regulatory risk, which is increased by the introduction of an unsophisticated, strict and unpredictable antitrust enforcement: this will lead to less innovative, profitable business conduct and less investments.

There's a whole set of reasons why we imply that the quality of antitrust enforcement is meant to be unsophisticated and strict in developing countries first of all, the Competition Authority and the legal system in general have access to limited resources, experience and skills. Second, corruption, interventionist regulatory culture, weak independence, will increased the likelihood that antitrust enforcement will be utilized to further policy goals different from economic efficiency. Finally the prominence of informal economy and limited data availability will distort the perception of market shares, potential competition and other relevant economic variables.

I test my research on the Indian case, which is intriguing in its peculiar mix of sophistication, inherited from the British legal system and regulatory ingenuity inherited from the closed-economy years.

Economics of Failure in Movies after the Big Crisis

This final paper addresses a traditional Law and Economics issue - business failure - but in a particular dimension, or its cinematographic representation. An empirical analysis of a database of 240 movies from before and after the financial crisis, as well as three case studies has been used to support an more general theory to explain the so called Blinder Law, which is "economists have the least influence on policy where they know the most and are most agreed and they have the most influence on policy where

they know the least and disagree most vehemently". While economics science has obtained some results that are generally accepted by experts, their perception among the population, which participate in the democratic decision making process, and non-expert policymakers radically differs. And we can use economic models to explain this different perception, analyzing how the cinematographic industry is influences the diffusion of wrong or correct economic ideas. In particular, I will use a principal-agent model and a cost of information theory to explain anti market biases in movies, and test them against our database. The result is that filmmakers get economics right or wrong independently from their biases toward the market, but in a manner which is inversely proportional to the complexity of the concept.

In my paper I've analyzed how complex representations of economic concepts substitute efforts for acquiring technical knowledge and create a hiatus between experts and non experts' comprehension of reality. Complex representation arise when the concept is easy enough to be elaborated in an intuitive way, because non-experts do not feel the need to refer to experts. A dynamic that economists need to understand and address, especially when they are meant to be policy relevant like those involved in economic analysis of law.