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Introducing Justice and Rights to Students of Economics

Mark D. White

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When teaching economics to undergraduate students, we focus almost exclusively on outcomes. In terms of individual choice, these outcomes take the form of utility or preference-satisfaction, sometimes expressed in terms of happiness, pleasure, or welfare. In terms of policy, we speak in terms of social welfare or aggregate utility, or the practical analogues of total income or gross domestic product. The goal is always maximizing or optimizing these outcomes, consistent with economics' roots in classical utilitarianism, and no consideration is usually given to the process by which these results obtain, which is a deontological concern of right and wrong. In other words, the ends are implied to justify the means, if only because the means are of no concern at all.

Students pick up on this, especially when introduced to policy contexts in which there are trade-offs between the outcomes for different individuals or groups. We teach them the Pareto criterion, which limits welfare-improving actions to those which make no person worse off, but then immediately make the qualification that this is impractical in the presence of scarce resources. Next we teach them the Kaldor-Hicks efficiency concept, which allows persons to be harmed as long as other persons are benefited by a larger amount. Sometimes we pay lip service to the possibility of compensation after the fact to make the harmed parties whole, leaving the benefited parties with excess well-being—lending Kaldor-Hicks efficient changes the term “potential Pareto improvements”—but this consideration is rarely included in policy analysis, left for noneconomists to worry about.

The message to students is that the economist's job is to make the pie as large as possible, regardless of how it is split. This metaphor is familiar from the classic “efficiency-equality trade-off,” in which the goals of maximizing output or income and splitting it equally are presented as being mutually exclusive. Efficiency and equality are both outcomes that (in theory) can be

maximized or optimized together, but this issue can also be framed as one of outcomes versus justice, specifically distributive justice, the concept of “who deserves what.” This contrast is starker in the case of Kaldor-Hicks efficiency, in which one person or group is harmed for the express purpose of benefiting others, invoking similar issues of justice and rights, specifically why the parties *deserved* to be treated so differently (if in fact they did).

Similar concepts arise with matters of perceived wrongdoing that go unaddressed by the economic models we teach our students. The most common instance may be pollution, where we speak of “optimal amount of pollution” that maximizes the difference between the value of industrial output minus the deleterious health effects on surrounding communities. If pollution is not only harmful but wrongfully so—in other words, if it involves a violation of rights—why do economic models allow it to be optimized rather than eliminated? Again, the issue is more stark when we talk about optimal levels of crime, balancing the costs of criminal behavior with the costs of the criminal justice system. Crime is surely a wrong, students correctly point out, so why are economists satisfied with intending to optimize it rather than eliminate it? The latter is impossible, given human nature and imperfection, but that does not mean it cannot be the appropriate goal (like we aim to eliminate disease).

Of course, students may never raise these issues, content to accept what their economics instructors teach them, which is implicitly based on consequentialist thinking, focused exclusively on outcomes with no regard for process. If they’ve been exposed to philosophy in other classes, they may wonder why justice or rights are never mentioned by their economics instructors (aside from mentioning that property rights are necessary for the efficient operation of markets). If they haven’t been exposed to these ideas elsewhere, they likely have no idea that other ethical perspectives exist, or even that the economics they are taught is based on a particular perspective, which is rarely made explicit. Both possibilities highlight the importance of including concepts from philosophy, including justice and rights, when we teach economics. The students with some philosophy background will notice the exclusion, and the students with no philosophy background will never know what they are missing.

In this chapter, I will survey basic concepts of justice and rights and argue for their importance in the economics curriculum, focusing on undergraduates (with whom I have the most experience). I will not be advocating for any particular version of justice or rights, nor any particular political philosophy or ideology corresponding to such, but merely for *some*

conception to be incorporated in economics teaching to enrich the utilitarian focus on outcomes with some deontological consideration of the process by which they are achieved.

Justice and Rights

Even among general philosophical concepts, justice is a notoriously difficult term to define.¹ Common intuition links it to fairness, as does philosopher John Rawls in his landmark treatise *A Theory of Justice*. In the first chapter, Rawls lays out the importance of a system of justice for a society of individuals with both competing and common interests, who

understand the need for, and are prepared to affirm, a characteristic set of principles for assigning basic rights and duties and for determining what they take to be the proper distribution of the benefits and burden of social cooperation. (1971, 5)

Furthermore, Rawls maintains that this basic concept of justice includes a rejection of “arbitrary distinctions” between persons in the assignment of rights and duties, as well as the existence of “a proper balance” of claims to the social surplus (*ibid.*). Reasonable people may disagree as to what those rights and duties are, and what form the “proper balance” takes—in other words, their particular conception of justice—but most would agree, according to Rawls, on the need for justice *per se*.

This is consistent with Aristotle’s views on justice, although he frames it as an issue of individual virtue rather than, as Rawls writes, “the first virtue of social institutions” (1971, 3).² A prominent element of Aristotelian justice (or fairness) is that like cases should be treated alike and unlike cases be treated unlike.³ This itself implies the need to determine what relevant factors are to be considered when comparing cases, which would comprise a specific conception of justice in Rawls’ terms. For example, one employer may hire based on experience with no regard for gender or race, arguing that experience alone is relevant to job performance and gender and race are not. Another employer may disagree, arguing that gender and race are as

¹ For a detailed overview, see Miller (2023).

² See Book V of Aristotle (2009a) for his primary work on justice

³ See Aristotle (2009a, 1131a10–b15; 2009b, 1280a8–15 and 1282b18–23).

relevant, if not more so, as experience, in order to remedy past injustices in hiring or create a more diverse workforce. Despite their differences, both employers are defending their choices based on what considerations are relevant to a fair allocation and thereby trying to achieve justice in their hiring practices.

Most important for the purpose of introducing justice into the economics curriculum is the role it plays vis-à-vis utilitarianism, which was spelled out by Rawls. Similar to his emphasis on the “priority of freedom” in his own particular conception of justice—better known for the “veil of ignorance” that leads to the content of the social contract—Rawls suggested that, according to general intuition, justice takes precedence over considerations of utility or well-being: “Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override” (1971, 1). Almost as if addressing economics, he goes to write that “justice denies that the loss of freedom for some is made right by a greater good shared by others,” and it “does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by the many” (1971, 1-2).

Rawls ties this position to rights when he writes that “the rights secured by justice are not subject to political bargaining or to the calculus of social interests” (1971, 2). This position is shared by other philosophers who focus on rights, such as Ronald Dworkin, who maintains that

Individual rights are political trumps held by individuals. Individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or not a sufficient justification for imposing some loss or injury upon them. (1977, xi)

Note that Dworkin is not saying rights must always take precedence over any concern for societal welfare, only that, to be rights at all, they must do so in some nontrivial cases. This is opposed to the standard economic position on rights, which considers them valuable only insofar as they create utility, well-being, or wealth; as Dworkin writes elsewhere, “the institution of rights, and particular allocations of rights, are justified only insofar as they promote social wealth more effectively than other institutions or allocations” (1980, 198). Economists treat rights, particularly property rights, as instrumental to the operation of the market system, and they view

both rights and the market as mechanisms for maximizing welfare, and accordingly they stand ready to dismiss either if they compromise that goal.⁴

Consistent with his general comments on justice and rights, Rawls critiqued utilitarianism directly, writing that it treats society, or those running it, as a single entity, making decisions to maximize “its” welfare, to which the individuals comprising society merely contribute, with no claims of their own. “Just as it is rational for one man to maximize the fulfillment of his system of desires,” supporters of this view say, “it is right of a society to maximize the net balance of satisfaction taken over all of its members” (Rawls 1971, 26; see also Buchanan 1949). As Rawls points out, this renders any discussion of distribution meaningless, because it is exclusively the total sum of utility in society that matters, not how much or how little accrues to any member of it. The “consequence of extending to society the principle of choice for one man” is that utilitarianism “does not take seriously the distinction between persons” (1971, 27). It is because of this misconception in thinking about society and the disregard it has for individual persons that an emphasis on justice and rights is necessary, especially in a field such as economics, which operationalizes so much of utilitarian logic under the guise of “scientific objectivity.”

Distributive Justice

The type of justice most relevant to economics (and the teaching thereof) is *distributive justice*, which deals with the allocation of scarce resources among the members of society. To be just, an allocation has to correspond to what people deserve, or what they have a claim or right to, and particular conceptions of distributive justice provide different answers to these questions.⁵

Efficiency

The utilitarian basis of economics provides one answer: Resources should be allocated in such a way as to maximize aggregate well-being, or to promote efficiency in the most general sense of the word (for which the market mechanism is widely believed to be best suited). Although this is

⁴ For an example of this contingent treatment of property rights, see White (2024).

⁵ For a detailed overview, see Lamont and Favor (2016).

technically a valid conception of distributional justice, it is one that recognizes no rights on the part of individuals; no one person deserves any amount of resources because all allocation is performed in the interests of the whole. As framed above, a meaningful understanding of justice stands in opposition to utilitarianism in that it supports some individual rights that can take priority over the common interest. Because utilitarianism—and the economics based on it—has no explicit regard for rights or desert, it can be considered a minimalist version of distributional justice, if one at all.

The problem with the type of distributional justice implied by utilitarianism and welfare economics is easily seen in the case of Kaldor-Hicks efficiency, which approves a policy if it benefits one group of citizens more than it harms another. Because increasing the sum of well-being is all that matters, no thought is given to what any of the affected parties, those harmed or those helped, did to deserve this treatment or why it is just. In the end, they were all used as means to the end of maximizing welfare, which is more problematic in the case of the parties harmed, whose treatment is most pointedly undeserved and unjust. (This lapse in justice would be rectified partially if compensation were incorporated into the policy, but issues of consent would still linger.)

Although utilitarianism itself may imply a minimalist distributional justice, the market mechanism that is believed to promote the efficiency and welfare desired by utilitarian economics is compatible with other systems of distributional justice. For example, the system of justice that is commonly advocated by classic liberals and libertarians, such as Robert Nozick (1974), is based on property rights that protect ownership and enable exchange, and allocates resources passively according to individual choice and initial endowments. If voluntary exchange is held to satisfy preferences and increase utility or well-being (outside of third-party effects, which we discuss later), this view of the market system promotes efficiency and satisfies a thicker sense of justice in which rights are protected and individuals are entitled to the fruits of their labor based on their initial allotment. It is the latter which is forced to carry much weight and can be thought to compromise the sense of justice involved with such theories, which usually

rely on Lockean theories of “first acquisition” with little further justification and have been widely questioned.⁶

Equality

Whether defended on utilitarian or deontological grounds with their accompanying theories of distributional justice, the traditional economic emphasis on efficiency contrasts with common concerns with equality, which implies distinctly different conceptions of distributional justice from either surveyed above. In egalitarianism in general, individuals deserve a certain level of resources due to their moral status as persons alone, separate from any initial endowments, value to the market, or contribution to total welfare. In this sense, the distributional justice implied by egalitarianism can be thought of as consequentialist, judging allocations of resources by their final outcomes, but not in a maximizing form such as utilitarianism that endorses the type of trade-offs that minimize the value of individuals. In Nozick’s terms (1974, 155-160), egalitarianism is a *patterned* system of distributional justice, relying on outcome rather than process to assess the justice of allocations. Accordingly, egalitarianism has less respect for individual rights, such as property rights, that are based on factors other than basic moral status and the associated emphasis on human need.

It is one thing to support equality in general, but it is another thing entirely to say exactly what this means, whether in theory or practice. Like justice, equality (or egalitarianism) is a vague term that encompasses a great deal of specificity and detail, as suggested by the title of Amartya Sen’s 1980 Tanner Lecture, “Equality of What?” After all, even a diehard supporter of the market system who believes in patterned distributional justice would support equal treatment and respect for all under the law, but this is very different from consequentialist egalitarians’ focus on equal allocations of some outcome (or at least resources that lead to desired outcomes).

Equality in the consequentialist sense can be promoted in terms of well-being, wealth, income, resources, opportunity, capabilities, or luck. Each of these conceptions of equality comes with its own practical difficulties, but the theoretical arguments between them can be stated in

⁶ See Locke (1690) for the original presentation, Nozick (1974, chapter 7) for a modern perspective, and Tuckness (2024, section 3) for a survey of criticisms.

terms of the more basic sense of justice and guarantee of human rights that each provides. In the end, the question boils down to: What do human beings *deserve*? One may respond well-being, but this is impractical, so the egalitarian may resort to instrumental measures such as wealth, income, or resources that contribute to well-being. This connection is imperfect, irregular, and unpredictable, so attention may also be given to more ethereal factors such as opportunity, as recommended by the capabilities approach (Robeyns and Byskov 2023). Most comprehensive may be luck egalitarianism, which recommends that resources and opportunities be allocated to minimize the effect of luck of individuals' starting point in life (Dworkin 2000).

The spirit of justice embodied by egalitarianism need not imply absolute equality along the chosen dimension. To the extent Rawls (1971) can be considered egalitarian at all, his version is very mild: His difference principle merely asks that any changes benefit the worst-off, reducing inequality but hardly eliminating it. There are other consequentialist systems of distributive justice that are of the same moderate spirit, such as *prioritarianism*, which places a similar emphasis on improving the situation of the worst-off in society (Parfit 1997), and *sufficientarianism*, which focuses on making sure the worst-off have “enough” (Frankfurt 1987). Society can aim to reduce inequality without eliminating it, but it must still decide what it is attempting to reduce the equality *of*, which is ultimately a question of desert and justice.

Also, equality need not be contrasted as starkly with market-based efficiency as it often is in introductory economics textbooks, where it is often presented as a strict trade-off. Even most systems of egalitarianism that focus on equalizing resources to promote more equal levels of well-being rely on the market to some extent, including both Dworkin's luck egalitarianism and Rawls' social contract conceived behind the “veil of ignorance.” Obviously, libertarianism and socialism are at the extremes, but most economic systems balance efficiency and equality in some way, and the distinctions between such hybrid systems would be better framed in terms of the different conceptions of justice they are promoting.

Corrective and Retributive Justice

Another type of justice with particular relevance to economics, though perhaps less obviously so, is corrective justice, which deals with rectifying a wrong done to someone. (This is similar to but distinct from retributive justice, which deals with crimes or wrongs done to society as a whole;

this will be discussed later.) Corrective justice is most commonly invoked in legal discussions when one party sues another for damages, which if successful results in a monetary payment that ideally makes the harmed party “whole,” or in an (ideally) identical situation to where they were before the harm. (In economic terms, this would be a state from which they would be indifferent to receiving the harm and not.)

In discussions of corrective justice, a crucial element is the violation of a right. Any successful private lawsuit requires not only that harm was done but that it was done in violation of a right. Aristotle was clear on this, writing that the law is chiefly concerned with “if one is in the wrong and the other is being wronged, and if one inflicted injury and the other has received it” (350 BCE, 1132). Legal scholars John Goldberg and Benjamin Zipursky elaborate:

Tortious wrongdoing always involves an interference with one of a set of individual interests that are significant enough aspects of a person’s well being to warrant the imposition of a duty on others not to interfere with the interest in certain ways, notwithstanding the liberty restriction inherent in such a duty imposition. (2010, 937)

For example, a person can only sue someone who stole, damaged, or trespassed on their property if in fact they hold a right to that property. A person can sue for remedies for breach of contract only if the other person violated rights that were explicitly created by that contract. Finally, a person can only sue for an injury to interests if they have a right that protects those interests. In all of these senses, a right means that the person holding it deserves compensation or redress—justice, specifically corrective justice—specifically because that right was violated.

Externalities, Pigou, and Coase

The last example above is relevant to economics due to a common topic in introductory courses: externalities. Externalities are usually defined as effects of a transaction on a party not involved in it, and for that reason are often called “third-party effects.” These effects can be positive, such as when homeowners improve the appearance of their property and thereby increase their neighbors’ property values. Positive externalities draw some policy attention, as we will see, but not as much as negative ones, which include homeowners who let their property become a decrepit eyesore that reduce neighboring property values, but also higher-stakes cases such as

pollution and climate change. More generally, the existence of externalities is an important caveat to the position that market activity based on voluntary transactions maximizes efficiency, a claim that cannot be thoroughly investigated without including third-party effects as well.

The standard economic response to externalities is purely utilitarian in spirit: Governments should manage the behavior that leads to the externality to optimize total welfare. The most direct way to do this is with Pigouvian subsidies and taxes, as initially proposed by Arthur Pigou (1920), to help the decision-maker appreciate or internalize the external effects of their behavior. In the case of positive externalities, which increase total welfare, the government enacts a subsidy to lower the net cost of such behavior to the decision-maker and inspire more of it, such as when governments help defray the cost of installing solar panels on private homes to reduce reliance on fossil fuels. In the case of negative externalities, which lower total welfare, the government taxes the relevant behavior, increasing the total cost to the decision-maker as they internalize the costs their behavior is imposing on others and leading them to engage in less of it. In both cases, the goal of the policy intervention is to bring the private costs and benefits facing the decision-maker in line with those of society.

As straightforward and intuitive as this response is, it is relevant only within the narrow utilitarian lens of neoclassical economics, in which well-being is the only factor to be considered and all harms are considered worthy of government intervention. When justice and rights are incorporated in the picture, however, the identification of relevant harms becomes more nuanced (White 2015). Because society consists of many people competing over scarce resources, harm is a ubiquitous part of human life. Whenever one person lays claim to a scarce resource, it harms the person who was second in line, whether it is two drivers vying for the last parking space or two workers hoping for the same job or promotion. But if the second person did not have an established and recognized right to the resource or award, they have no cause to assert harm and request compensation. Scarcity inevitably leads to competition in the most general sense, and there is no injustice or violation of rights implied by losing a fair competition. Legal scholar Richard Epstein identifies such harms as “*damnum absque iniuria*: economic losses that go uncompensated because they were not preceded by any violation of right” (1982, 61).

Adding justice and rights to the way we teach externalities allows us to explain the importance of wrongness to whether harms merit an official response. Harm alone is not sufficient absent the violation of a right to be immune from that harm—and it is the violation of

that right that justifies government intervention. If one driver takes a parking space that belonged to another according to a pre-existing property right, the first driver wrongfully harmed the second, and the second deserves recompense as a matter of corrective justice. If the second driver had no such right, they have no such claim, no more than the first driver would have had if the second driver had reached the space first. The negligent homeowners who let their property deteriorate may lower the property values of their neighbors, who nevertheless had no recognized right to a certain value, and so have no claim to compensation.⁷

Only third-party harms that involve rights violations (that is, are wrongful) deserve a policy response; all other such harms are incidental to life in society. But most advanced societies have a mechanism for dealing with wrongful harms that predates Pigou: the law of tort, contract, and property, all based on corrective justice. The existence of a right that was violated allows the wrongfully injured party to sue for damages or compensation, which relieves the state of any responsibility to manage behavior with taxes. Not only does the law perform the same function that Pigouvian taxes do, but it serves justice better because the latter do not compensate for the wrongfully harmful behavior, negating its impact, but rather optimizes it, reducing it to the level where the marginal benefit of the behavior to all affected parties is equal to the marginal cost to same. Whatever wrongfully harmful behavior remains after it is optimized continues to violate someone's rights and is therefore unjust, but this is not recognized by the standard economic approach to externalities.

Pollution is the most obvious case of harm that violates rights—albeit less well-defined ones—and therefore justifies an official response from the state, whether in the form of law or regulation.⁸ This also leads to significant cognitive dissonance on the part of economic students who wonder why the recommended economic “solution” to this wrong is to manage or optimize it rather than try to eliminate it or, at the very least, arrange for comprehensive compensation. Pollution also provides an example of wrongful harms that are not adequately addressed by the legal system, due to practical difficulties with proving causal effects of offending parties on a

⁷ If they do sell their property for less money, it also represents a positive externality for the buyer, explaining why such “pecuniary externalities” involving effects on market prices are typically ignored by economists—not because of the absence of rights violations, but because of the absence of an effect of total welfare.

⁸ See Geistfeld (2014, 389) on the “underlying entitlement to physical security” that represents the right violated by polluters.

diffuse set of victims. But it also demonstrates that the reliance on regulation is a second-best option, only to be taken if there are clear reasons that the legal system cannot deal with the relevant issues.

Pigouvian taxes are not the only response to externalities taught to economics students. The Coase Theorem, summarizing the ideas Ronald Coase presented in his classic 1960 paper, points to an alternative resolution that acknowledged the importance of rights, even if his presentation was focused on efficiency rather than justice. Coase showed that parties in a private legal dispute will reach the lowest-cost (efficient) solution under two conditions: property rights are clearly assigned to one of the parties (regardless of which one) and negotiation between them is nearly costless. These two conditions imply that even if the party in possession of the lower-cost solution to the dispute has the right to demand the other party solve it, the latter can pay the former to implement the lower-cost solution. If either of these two conditions do not hold, however, effective negotiation may not take place, and the case will need to be settled in court.

Coase himself argued that property rights are often not clearly assigned, and many scholars consider “missing markets,” resulting from the absence of property rights, as one cause of externalities such as pollution. However, his analysis treated the allocation of rights as arbitrary, because *who* holds the property right in a dispute does not affect the efficient outcome, just who pays for it (which does not affect efficiency). Furthermore, Coase treated harms from a private dispute to be reciprocal; in his famous example of passing trains throwing sparks that burn nearby crops, the railroad harms the farmers, but stopping or moving the trains would harm the railroads. This follows from the perspective of the irrelevance of the rightsholder to efficiency, which was Coase’s main point which he made brilliantly, but at the cost of minimizing the normative importance of the underlying rights that are a necessary condition for its operation. Indeed, the failure to acknowledge pre-existing moral rights leads Richard Posner (1973, 216), a pre-eminent figure in the application of economics to the law, to ask, in reference to Coase’s example, “what ethical principle compels society to put a crimp in the [railroads] because of the proximity of the [crops]?” That ethical principle can be easily stated in terms of justice or rights, which was not important to Coase’s argument, but is essential to a complete assessment of such situations.

The treatment of private legal disputes in the economics approach to law, or *law-and-economics*, follows the same pattern, which is unsurprising given its utilitarian nature in general and the tremendous influence of Coase on the field. The area of tort law (or accident law) provides the clearest example. Traditionally, tort law exists to enforce corrective justice by determining under what conditions harmed parties can demand compensation from those who injured them. These conditions usually include evidence of harm and cause, plus fault if a negligence rule applies, in which case the injurer is liable for damages only if they took insufficient precaution; if a strict liability rule applies, injurers who have been proven to have caused harm to victims are liable regardless of their level of precaution.

Under the economic approach to law, the goal of tort law (as with law in general) is to promote efficiency, specifically to minimize the total costs of accidents, including both harm to victims and precaution on the part of potential injurers. This leads to the determination of an optimal level of precaution at which the marginal cost of precaution and marginal benefit of reduced harms are equal, at which point the question becomes how to use the law to provide incentive for potential injurers to take this optimal level of precaution (when it is assumed, in the absence of legal obligation, they would take none). In the simplest situations, the rules of negligence and strict liability both lead to the optimal level of precaution: Negligence does so by eliminating liability if the injurer took the required level of precaution, and strict liability does so by forcing potential injurers to internalize the costs of their risky behavior, making it in their interests to minimize total costs.⁹

Although this equivalence becomes less robust when complications are introduced, it remains intriguing that two significantly different approaches to liability can lead to the same efficient outcome. Economists are then led to further inquiry to determine if there are any other factors that render one rule more efficient, such as a difference in administrative costs to the legal system.¹⁰ There is a clear way to distinguish between the two rules, however: They are polar

⁹ All the analyses of efficiency in law-and-economics conveyed here are standard and can be found in any textbook in the field.

¹⁰ This is inconclusive: Negligence trials will be longer due to the necessity of evidence regarding fault, increasing the cost to the legal system, but it also makes them more costly for plaintiffs and therefore less lucrative, so we

opposites from the viewpoint of corrective justice and rights, because strict liability guarantees compensation to victims of wrongful harm while negligence indemnifies injurers from liability provided they take sufficient precaution (which, it is assumed, they rationally do). If justice were given any weight by economists, they might take this to be the tiebreaker between two equally efficient rules; even if they do not, students deserve to be exposed to this traditionally essential aspect of the law.

Similar neglect of justice is seen in other areas of law. For example, contract law is traditionally considered to enforce promises or commitments between consenting parties for the sake of mutual benefit. When circumstances change, one party to a contract may back out of the agreement because it no longer serves their interests, and the other party sues for breach of contract. These are two main legal options in such cases: The court can either award *expectation damages*, which compensate the nonbreaching party for the lost benefit they expected to get from performance of the contract, or *specific performance*, in which the breaching party is ordered to complete the contract as written (effectively denying the right to breach). In the simplest situations, just like in tort law, both rules lead to “efficient breach,” an application of Kaldor-Hicks efficiency wherein breach occurs only when the breaching party gains more from breach than the other party loses (and breach is thereby welfare-increasing). If breach is efficient, the breaching party would be willing to compensate the other party for their losses because they would lose even more from performance.

Furthermore, if the conditions for the Coase Theorem hold, this would occur whether such damages or specific performance is ordered by court; in the latter case, the breaching party would negotiate with the other party to be released from their obligations after adequate compensation was offered and accepted. However, even though expectation damages and specific performance both lead to efficient breach, they have very different implications for justice and rights: Expectation damages give the right to breach to the party who wants to break the contract, leaving the nonbreaching party to accept whatever damages are awarded, while specific performance gives the right to control breach to the potential victim, who can then dictate their own terms for allowing the other party to break the contract, guaranteeing adequate

would expect fewer of them. Strict liability trials are relatively inexpensive to both the system and plaintiffs, but we would expect more of them.

compensation based on voluntary consent. As with tort law, considerations of justice and rights make two equally efficient legal instruments look very different, but these factors are rarely invoked in the law-and-economics classroom or literature.

Finally, the economic approach to crime poses the starkest example of the neglect of justice, chiefly because the application of efficiency or utilitarianism is more obviously out of place. Similar to pollution, crime is also subject to optimization in the economic approach to crime, reduced to the level where any additional reduction in harm from crime would be less than the cost of enforcement needed to prevent it. Indeed, Posner (1983, 215) wrote that harsh penalties that would deter more crime would result in “too little” crime from the point of view of efficiency—but certainly not from the point of view that crimes represent wrongs that the government should attempt to eliminate rather than manage.

The lack of meaningful justice in the economic approach to crime is particularly evident in its approach to criminal punishment, which follows the utilitarian justification of deterrence: the severity and probability of punishment are meant to lessen the harms from future crime, and they are optimized in combination with the costs of punishment and enforcement (similar to how the sum of victim harm and precaution costs are minimized in the economic approach to tort law). As is well known in the philosophy of punishment, this leads to unjust practices, such as disproportionately severe penalties (both to send a powerful message to potential offenders and to economize on enforcement resources) and insufficient concern with punishing the innocent (which still sends a deterrent signal, especially if information regarding innocence is less available to the public).¹¹ This fault can be countered by including *retributivist justice*, which in its negative form protects the guilty from excessive punishment and the innocent from any punishment at all, and in its positive form ensures that the guilty do not receive less punishment than they deserve. At the least, incorporating retributivist justice into deterrent systems of justice, as hybrid systems of criminal justice aim to do, can temper the extreme tendencies of the latter, decreasing the chances of justice being compromised in the interest of efficiency.¹²

¹¹ For a detailed summary, see Hoskins and Duff (2024).

¹² This assumes, of course, that justice does not simply mean efficiency, as Posner once claimed (2003, 777).

Conclusion

Amartya Sen leads off his recent treatise on justice with a quote from Charles Dickens' *Great Expectations*, in which the main character Pip says that, to children in their small realm of experience, "there is nothing so finely perceived and so finely felt, as injustice."¹³ Some of those children grow up to be economists, at some point losing that basic intuition for matters of justice and injustice, right and wrong, obligation and desert. In this chapter, I have argued that justice and rights should be included in the economics curriculum, not simply to replace or counter the utilitarianism inherent in traditional economics, but to bring out its richer ethical nuance at the same time that we supplement it with other ethical perspectives. This does not, of course, preclude other schools of moral philosophy from being used while teaching economics; for example, deontology and virtue ethics would be worthy inclusions in discussions of individual choice. But economic understanding of individual decision-making has been expanded in recent years, in particular with the growth of behavioral economics, which can accommodate some alternative ethical reasoning. On the other hand, the utilitarian basis of welfare economics and policymaking is rarely made explicit, questioned, or challenged, especially in the classroom, where these critical attitudes can do the most good. Including discussions of justice and rights in the presentation of these topics to students can only result in more ethically well-rounded economists, who will at least be aware of the shortcomings of received economic technique, and may even improve on them going forward.

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¹³ Sen (2009, vii), quoting Dickens (1861, 63).

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