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## The Theological Law Firm Academy

Law & Justice By The Bible

Part II of IV

### The Economic Consequences of Legal Decision-Making

The Economic Analysis of Law | US v. Carroll Towing  
The Critical Legal Studies Movement | Costs of Incarceration in the US

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#### Proverbs 21:20 (KJV)

<sup>20</sup> There is treasure to be desired and oil in the dwelling of the wise; but a foolish man spendeth it up.

#### Luke 14:28-30 (KJV)

<sup>28</sup> For which of you, intending to build a tower, sitteth not down first, and counteth the cost, whether he have sufficient to finish it? <sup>29</sup> Lest haply, after he hath laid the foundation, and is not able to finish it, all that behold it begin to mock him, <sup>30</sup> Saying, This man began to build, and was not able to finish.

### The Economic Analysis of Law

Law and Economics or Economic Analysis of Law is the application of Economic Theory (specifically **Microeconomic Theory**) to the analysis of law. Economic concepts are used to explain the effects of laws, to assess which legal rules are economically efficient, and to predict which legal rules should be promulgated.

**Positive Law and Economics** uses economic analysis to predict the effects of various legal rules. So, for example, a positive economic analysis of tort law might predict the effects of a **Strict Liability** rule as opposed to the effects of a **Negligence** rule.

Positive Law and Economics has also at times purported to explain the development of legal rules, for example the common law of torts, in terms of their economic efficiency.

**Normative law and Economics** goes one step further and makes **Policy Recommendations based on the economic consequences** of various policies. The key concept for normative economic analysis is efficiency, in particular, allocative efficiency.

Critics of the law and economics movement have argued that normative economic analysis does not capture the importance of human rights and concerns for distributive justice. Some of the heaviest criticisms of the "classical" law and economics come from the critical legal studies movement.

A common concept of efficiency used by law and economics scholars is **Pareto Efficiency**. A legal rule is Pareto efficient if it could not be changed so as to make one person better off without making another person worse off.

A weaker conception of efficiency is **Kaldor-Hicks Efficiency**. A legal rule is Kaldor-Hicks efficient if it could be made Pareto efficient by some parties compensating others as to offset their loss.

### US v. Carroll Towing

159 F.2d 169 (2d. Cir. 1947)

The 2nd Circuit Court of Appeals (CT, NY, VT) in 1947 developed a test to determine the standard of care for negligence. The judgment was written by Learned Hand. In it, he described what is now called "The **Calculus of Negligence**" or the **Hand Test**, a classic example of a balancing test.

Judge Hand, stated that there was no general rule with which to deal with liability when the barge of an absentee bargee breaks free and causes damage. He proposed an algebraic formula:

- (1) The probability that she will break away;
- (2) The gravity of the resulting injury, if she does;
- (3) The burden of adequate precautions.

In algebraic terms, if the probability, P; the injury, L; and the burden, B; then liability depends upon whether B is less than L multiplied by P: i.e., whether  $B < PL$ .

Simply put, the test says that if  $(Burden < Cost\ of\ Injury \times Probability\ of\ occurrence)$ , then the accused will not have met the standard of care required. If  $(Burden \geq Cost\ of\ injury \times Probability\ of\ occurrence)$ , then the accused may have met the standard of care.  $C > GL$  (cost is greater than gravity of loss)

### The Critical Legal Studies Movement

**Critical legal studies** was a movement in legal thought in the 1970's and 80's committed to shaping society based on a vision of human personality devoid of the hidden interests and class domination that was perceived to be behind existing legal institutions. Adherents of the movement sought to destabilize traditional conceptions of law, and to unravel and challenge existing legal institutions.

### The Costs of Incarceration in the US

Through the **Juvenile Courts** and the adult criminal justice system, the United States incarcerates more of its youth than any other country in the world.

In 2007, around \$74 billion was spent on corrections. The total number of inmates in 2007 in federal, state, and local lockups was 2,419,241. That comes to around \$30,600 per inmate. In 2005, it cost an average of \$23,876 dollars per state prisoner. State prison spending varied widely, from \$45,000 a year in Rhode Island to \$13,000 in Louisiana.

In California in 2008, it cost the state an average of \$47,102 a year to incarcerate an inmate in a state prison. From 2001 to 2009, the average annual cost increased by about \$19,500. In 2003 among facilities operated by the Federal Bureau of Prisons, it cost \$25,327 per inmate.

Housing the approximately 500,000 people in jail in the USA awaiting trial who cannot afford bail costs \$9 billion a year. Most jail inmates are petty, nonviolent offenders.

Always feel welcome to contact me directly with any questions, comments, or great ideas!

*Jack Johnson*

Founder & CEO

100 Edgewood Avenue, Atlanta, GA 30303 | (855) ADVOC8.0 | (855) 238-6280

[www.TheAdvocacyFoundation.org](http://www.TheAdvocacyFoundation.org)



*The* Advocacy Foundation, Inc.  
100 Edgewood Avenue, Atlanta, GA 30303

John C (Jack) Johnson III  
Founder & CEO



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ADVOCACY



*Helping Individuals, Organizations & Communities  
Achieve Their Full Potential*

**Our Mission**

The Mission of The Advocacy Foundation  
is Threefold:

**To Rescue**

Young persons from the prison pipeline  
and help redirect and restore their lives;

**To Teach**

New and fledgling nonprofit organizations to become  
fundable, to thrive, and to maintain compliance;

**To Train**

Qualified Juvenile Justice Professionals with a passion  
for effective careers in the Juvenile Justice system.

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