

InDret

Book Review:

***The Elgar Companion to Law and Economics*, by
Jürgen G. Backhaus**

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- **Jürgen G. Backhaus (Editor). *The Elgar Companion to Law and Economics*. Edward Elgar, Cheltenham, UK. Northampton, USA, 1999, XII + 548 pags. 200 US \$.**

At the age of twenty-seven, Pietro Trimarchi (1934-) published *Rischio e Responsabilità Oggettiva* (Milan, Giuffrè, 1961), one of the most brilliant European monographs on tort law to appear in the 1960's. Other books, such as *Causalità e danno* (Milan, Giuffrè, 1967), were to follow, but over time the great Italian jurist moved on from his successful attempt to reform the system of company liability, wrote an excellent manual of private law institutions (*Istituzioni di Diritto Privato*, 13^a ed., Milan, Giuffrè, 2000), reprinted many times, and finally joined, with notable success, the worthy profession of lawyers. Today, Giampaolo Frezza (University LUMSA, Rome) and Francesco Parisi (George Mason University, Fairfax) place Trimarchi between George Stigler and Thorstein Veblen in the portrait gallery of classic authors on the economic analysis of law, a gallery consisting of 49 philosophers, economists, lawyers, sociologists and publicists that takes up almost half of *The Elgar Companion to Law and Economics*, a book edited by Jürgen Backhaus and which InDret regards as recommended reading (Part IX, pp. 280 to 531. For Pietro Trimarchi, see pp. 492 to 508).

Pietro Trimarchi's biography is more or less the story of the economic analysis of law itself, at least in European terms: had he been born and worked in the U.S.A. Trimarchi would nowadays be cited as one of the founders of the *Law & Economics* movement alongside jurists such as his compatriot and contemporary, Guido Calabresi (Milan, 1932 -). But Trimarchi continued living and working in his native Italy and his career has thus been that of one of the great Italian jurists of our time rather than an American teacher, let alone an economic analyst of law: for better or for worse, European law faculties continue to ignore the *Law & Economics* movement. Books such as that edited by Jürgen Backhaus try to both bridge this gap that arose almost fifty years ago and pay tribute to those who tried to prevent European legal analysis being so isolated from anything that remotely resembled the social sciences (in the sense that these are understood both in Europe and the rest of the world).

Naturally, Backhaus's attempt is at times quixotic, as was the work of the celebrated Trimarchi in its day, but this does not make it any less worthy of praise, an important point as far as InDret is concerned: on the fringes of a cultural tradition and going against the open reticence of a large part of the European juridical science establishment – the *Rechtswissenschaft* – Backhaus and the other contributors who have made this book possible undertake the improbable task of lining their portrait gallery with figures as diverse as Plato and Karl Marx, Cesare Beccaria and Otto v. Gierke, Max Weber and George Stigler (the latter being one of only two figures listed, the other being Trimarchi, who was born in the twentieth century). So if, beyond the heroic attempt to identify a European tradition in *Law & Economics*, the patient reader discovers the *leitmotif* that connects the 49 authors in the gallery, InDret would be grateful if he or she would let us know so as to enlighten our small community.

The first half of the book is less forced although, once again, the division of Parts I to VIII (pp. 1 to 270) is uneven and it is not clear to the reader what is the *fundamentum divisionis* underlying the book's improbable organization: the introduction, unsurprisingly dedicated to Ronald Coase (and well written by Francesco Parisi), is followed by an interesting discussion of property rights (by Christian Müller and Manfred Tietzel) and a very brief and invaluable reference to legal changes within economic analysis (by Richard N. Drobna and Douglas North). "Private Law and Economy" (Part II) consists of a chapter on family law (Margaret Brinig: essential reading for Spanish family lawyers who, by familiarizing themselves with the complete works of this professor and "no nonsense lady" from the University of Iowa, would likely make the intellectual investment of their careers) accompanied by another on inheritance (Richard E. Wagner). "Public Law and Economics" (Part III) includes chapters on the central banks, constitutional economy, the economic analysis of administrative law, the principle of subsidiarity and, once again, property law (Thomas J. Miceli). The economic analysis of labour law (Part IV), that of regulation, taxation and public companies (Part V), as well as the analysis of the extrajudicial settling of disputes (Part VI, another good chapter by Miceli) precede a detailed discussion of the sources of law (Part VII) in which the reader will find extensive references to the most recent literature on the subject, above and beyond the classic *Law & Economics*. For those lawyers who are receptive to the social sciences, and not just to the economy, the new areas of work are defined by the shift from the application of the neoclassical paradigm to law to a more complex analytic approach, one which is increasingly concerned with social norms rather than just rules. Douglas North has devoted many years of his intellectual life to showing us that we cannot understand institutions without analyzing the triad formed by the formal rules of law, social norms and the degree to which both are enforced. It is to the credit of Jürgen Backhaus (the book's editor and author of the introduction and six chapters and biographies) that he has brought together an excellent group of researchers from both sides of the Atlantic who are able to take us a step forward in developing the economic and institutional analysis of law: Backhaus's book is a good companion.