

Introduction

Capitalism and Its Schisms

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The first decade of the 21st century was a difficult period for the discipline of economics. Amidst the confusion that followed the collapse of Lehman Brothers on 15 September 2008, and the ensuing global financial crisis, one idea continued to attract consensus: economics – and macroeconomic theory in particular – had gone badly astray.

Paul Krugman, a Nobel Laureate, wrote in the *New York Times*: “[T]he economics profession went astray because economists, as a group, mistook beauty, clad in impressive-looking mathematics, for truth”.¹ Richard A Posner was similarly acute in his criticism, contending that “macroeconomics, or at least the part of macroeconomics that studies the business cycle, is a weak field ... In part this may be because macroeconomists’ advice tends to a suspicious degree to be correlated with their politics ... This is not the sign of a mature science”.²

Posner’s voice, in particular, carried an echo which resonated for legal reasoning. For the quarter century preceding this period, he, amongst others, had championed the law and economics movement, directed by “the conviction that economics is a powerful tool for analysing a vast range of legal questions” which “enables the law to be seen, grasped and studied as a system – a system that economic analysis can illuminate, reveal as coherent and in places, improve”.³

The law and economics movement had, during this time, gathered a momentum that carried it beyond the familiar domains of antitrust and tax, and began

1 *New York Times*, 6 September 2009, quoted in Roger E Backhouse, *The Puzzle of Modern Economics: Science or Ideology?* (Cambridge University Press, New York, 2010) at 1.

2 Richard A Posner, *The Crisis of Capitalist Democracy* (Harvard University Press, Cambridge MA, 2010) at 305-306. See further Richard A Posner, *A Failure of Capitalism: The Crisis of '08 and the Descent into Depression* (Harvard University Press, Cambridge MA, 2009) Chapter 8, “The Economics Profession Asleep at the Switch”.

3 Richard A Posner *Economic Analysis of Law* (Wolters Kluwer, Austin, 7th ed, 2007) at 3. Holmes was arguably responsible for the birth of such thinking: Oliver Wendell Holmes, “The Path of the Law” (1897) 10(8) *Harvard Law Journal* 457 at 460. A useful history is provided in Heath Pearson, *Origins of Law and Economics: The Economists’ New Science of Law, 1830-1930* (Cambridge University Press, Cambridge, 1997).

This is a preview. Not all pages are shown.