

## BOOK REVIEW

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Michael Faure & Goran Skogh, *The Economic Analysis of Environmental Policy and Law: An Introduction* (Edward Elgar Publishing 2003).

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### I. INTRODUCTION

The environmental movement of the 1960s and 1970s was shaped by a general interest concern for human health and a conservationist based call for increased levels of environmental protection.<sup>1</sup> Motivated by public pressure, Congress enacted numerous pieces of legislation designed to aid the protection of the environment.<sup>2</sup> Public pressure consumed the Congressional decisionmaking process concerning enactment of this environmental legislation; thus, rather than adequately consider regulatory alternatives or debate the potential impact of various economic and scientific considerations, Congress legislated largely as a reaction in “a quest for public credit and acclaim.”<sup>3</sup>

Congress’ failure to consider the potential costs of its environmental legislation soon led to a barrage of attacks from regulated industry and the academy deriding the legislation as a failure from a cost-benefit perspective.<sup>4</sup> Since that time, debate has raged in the academic literature and in policymaking circles over whether and the extent to which economic analysis should be used in evaluating environmental regulation. On one side are those who reject entirely the notion that efficiency should serve as even a guiding principle in the pursuit of environmental protection through

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1. See FRANK P. GRAD & JOEL A. MINTZ, ENVIRONMENTAL LAW 1-6 (4th ed. 2000).

2. See CASS R. SUNSTEIN, RISK AND REASON: SAFETY, LAW, AND THE ENVIRONMENT 15-16 (Cambridge University Press 2002).

3. *Id.* at 11.

4. See Lynn E. Blais, *Beyond Cost/Benefit: The Maturation of Economic Analysis of the Law and Its Consequences for Environmental Policymaking*, 2000 U. ILL. L. REV. 237, 240-41.

regulation and legislation.<sup>5</sup> On the other are those who see utility in an approach to evaluating environmental policy that at least considers the efficiency model as derived through cost-benefit balancing in the policy and law making processes.<sup>6</sup>

While the normative debate over the extent to which (if at all) environmental policymaking should consider economic analysis will undoubtedly continue, one thing is already certain: encountering economic analysis is inevitable and confronting it necessary if one wishes to fully comprehend the contours of environmental law. As one commentator put the matter, “[o]ne cannot study environmental law today without encountering economic analyses. Economics is everywhere — in legislative hearings and debates, regulatory documents, judicial opinions, legal casebooks, and academic articles. People interested in working in the environmental field or understanding environmental policy, therefore, need to be fluent in economics.”<sup>7</sup>

It is within this briefly laid landscape of modern environmental law that Michael Faure and Goran Skogh present *The Economic Analysis of Environmental Policy and Law*. Written primarily as a textbook—but also having immense utility as a work of general reference for students, scholars, and practitioners — *The Economic Analysis of Environmental Policy and Law* claims for its primary goal an “attempt to fill the gap between environmental economics and environmental law with a study on ‘environmental law and economics’.”<sup>8</sup> Within this framework, Professors Faure and Skogh employ, as part of their vehicle for fleshing out an economic analysis of environmental law, a comparative case study approach.

## II. ORGANIZATION

The book is divided into four parts. Part I — entitled “Rights and the Environment” — begins by introducing some fundamental concepts to the study of environmental law, including, for example, sustainable development, the precautionary principle, and the polluter pays principle.<sup>9</sup> The remainder of Part I extends the rights based analysis to a discussion of property rights. Throughout Part

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5. See, e.g., MARK SAGOFF, *THE ECONOMY OF THE EARTH: PHILOSOPHY, LAW, AND THE ENVIRONMENT* (Douglas MacLean ed., Cambridge University Press 1988).

6. See, e.g., DANIEL A. FARBER, *ECO-PRAGMATISM: MAKING SENSIBLE ENVIRONMENTAL DECISIONS IN AN UNCERTAIN WORLD* (University of Chicago Press 1999).

7. Barton H. Thompson, Jr., *Panel: What Good is Economics?*, 37 U.C. DAVIS L. REV. 175, 176 (2003).

8. MICHAEL FAURE & GORAN SKOGH, *THE ECONOMIC ANALYSIS OF ENVIRONMENTAL POLICY AND LAW: AN INTRODUCTION* 3 (Edward Elgar Publishing 2003).

9. *Id.* at 19-39.

I, during the course of laying the foundations for the modern study of environmental law, the authors introduce some basic concepts designed to serve as building blocks for the more in-depth economic analysis presented later in the book. Chapter 3, for example, contains a nice introduction to the tragedy of the commons and the free-rider problem.<sup>10</sup>

Part II introduces the fundamental economic concepts necessary for understanding the economic analysis of any area of law. Of essential importance are Chapters 5 and 6, which introduce, among other concepts, the basics of price theory, the operation of competitive markets, and market failures. The remainder of Part II continues to introduce some fundamental economic concepts while beginning to increase the extent to which the environmental and economic discussions become integrated. Chapter 8, for example, addresses the principle of sustainable development in the context of economic growth.<sup>11</sup>

Part III moves away from the price theory based model of economic analysis to examine the economics of property rights and various environmental laws under the framework of an institutional economic analysis. Specifically, the authors adopt a normative theory of transaction costs analysis to determine which environmental rules are efficient. The heart of Part III is Chapter 10, which forms the architecture within which the authors' efficiency seeking norm is analyzed by giving extended treatment to the operation of, and debate surrounding the use of, cost-benefit analysis.<sup>12</sup> Within this construct, the authors examine the regulation of industry (Chapter 11), land law (Chapter 12), and environmental taxes and tradeable permits (Chapter 13).

Part IV closes the book by addressing the concepts of risk and liability. Chapters 14 and 15 employ a traditional discussion of the economics of tort liability. Chapter 16 introduces the economics of environmental crime. Finally, Chapter 17 uses various modes of analyses to address how best to minimize environmental harm.

### III. DISCUSSION

*The Economic Analysis of Environmental Policy and Law* is a lucid and comprehensive treatment of an area that has become of fundamental importance to the study of environmental law. These positives, however, may also correspond to a potential criticism of the book: that it is at times simplistic in its treatment of

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10. *Id.* at 40-51.

11. *Id.* at 126-39.

12. *Id.* at 165-87.

fundamental principles of economics and environmental law. This criticism has some merit. But to measure something against the ideal does little good. The book is designed as an introductory text to the study of the economic analysis of environmental law. Both economic and environmental law principles are introduced in a way that assumes no previous knowledge. Considering this objective, the authors have done well to maximize content and sophistication in limited space.

A better criticism, perhaps, is that the authors go too far in neglecting alternative approaches to the study of environmental law. This criticism too, though, has its limits. The title of the book makes clear what it is about; the authors have not attempted to hide their economics driven approach. This criticism, then, must take on a more nuanced nature. While the economic analysis of environmental law is, of course, the theme of the book, perhaps the authors could have focused more on proving the utility of that approach by examining and comparing analyses of particular environmental laws or problems using different methods. This need not take the form of simply advocating the economic analysis of environmental law in the abstract. Rather, a contextual examination of the differing approaches throughout the book may be helpful to the uninitiated reader to whom this book is primarily addressed if for no other reason than to aid conceptualization of the economic approach.

The serious study of modern environmental law requires students to be well versed in basic microeconomics and knowledgeable of how economic principles are used to analyze laws and problems in the field. *The Economic Analysis of Environmental Policy and Law* fills a crucial gap in the literature by focusing on the application of economic principles to the study of environmental law. The use of economics to analyze problems in environmental law need not be exclusively adopted as a normative principle to find utility in this book. The economic approach has secured a seat at the table of debate over how best to analyze and solve important environmental problems. Thus, the economic approach must be understood by students, scholars, and practitioners hoping to make a difference in the field.

With their introduction, Professors Faure and Skogh have provided a readable and concise yet comprehensive examination of the economic analysis of environmental law and policy. Their book will serve as an outstanding starting point and reference for understanding the economic analysis of many of the important issues confronting environmental law today.