

Editorial

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The Road Not Taken – Reading Calabresi’s “The Future of Law and Economics”

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Abstract:

The publication of Guido Calabresi’s book “The Future of Law and Economics” has drawn a substantial amount of attention among law and economics scholars. We thought that the best way to devote special attention to this book was to devote a Special issue to it. This article situates Calabresi’s book among other reflections on the future of the discipline, introduces and explains the reasons behind this Special issue and discuss the organization and content of it.

We emphasize how Calabresi’s historical-conceptual standpoint allows him to isolate the stakes of different future developments around the question of how could further appreciation of legal institutions that defy the standard economic assumptions help the field develop theoretically. Overall, the contributors all shared Calabresi’s attempt to restore the balance between Law and Economics and the need to better account for the “whole unanalysed experience of human race”, often neglected by the Economic Analysis of Law approach. Most disagreements are about the ‘how’. In any case, the search for the Law and Economics ‘not (yet) taken’ or for other “Law and ... ” approaches is always open to the *Future*.

Keywords: law and economics, Guido Calabresi, interdisciplinary research, economic analysis of law

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*I shall be telling this with a sigh
Somewhere ages and ages hence:
Two roads diverged in a wood, and I—
I took the one less travelled by,
And that has made all the difference
Robert Frost, The Road not Taken*

Kublai [Kahn] asked Marco [Polo]: –*You, who go about exploring and who see signs, can tell me toward which of these futures the favoring winds are driving us. [Marco Polo] - For these ports I could not draw a route on the map or set a date for the landing. At times all I need is a brief glimpse, an opening in the midst of an incongruous landscape, a glint of light in the fog, the dialogue of two passersby meeting in the crowd, and I think that, setting out from there, I will put together, piece by piece, the perfect city, made of fragments mixed with the rest, of instants separated by intervals, of signals one sends out, not knowing who receives them. If I tell you that the city toward which my journey tends is discontinuous in space and time, now scattered, now more condensed, you must not believe the search for it can stop.*

Italo Calvino, *Invisible Cities*

1 Meetings along the road

This special issue was borne out of an encounter. On a sunny Turin afternoon of the 8th of May 2018, the past met the future. The International University College of Turin (IUC), a small faculty holding an LLM programme in Comparative Law, Economics and Finance for a group of students from all over the world received a high profile visit. The students had the chance to meet Guido Calabresi, Senior United States Circuit Judge, former Dean of Yale Law School and, most importantly, one of the founders of Law and Economics. However, this is not something unusual. His annual lecture on law and economics has been a memorable moment in the education of many generations of students of this master programme.

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This article and the Special issue that follows is a result of a Workshop on “The Future of Law and Economics” held in the spring of 2018 at International University College of Turin with judge Guido Calabresi that was organized by Mr Stojanović.

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Well in his eighties, professor Calabresi has lost little, if any, of his intellectual vigor. He directly engaged students, wanting more to hear what they think than to impose his thoughts on them. Like every year, he provided the audience with a look on the inside, in the thought process of an academic, usually kept out of the light of publications and conferences. He focused on the search for innovative ways to tackle subjects that many others have already analyzed.

Still, unlike on previous occasions, in 2018 this encounter did not end with the conclusion of the discussion after the lecture. Instead, a group of young scholars that arrived from different parts of Europe the previous day accompanied professor Calabresi to the second session in order to discuss with him the ideas from his recently published book *The Future of Law and Economics – essays in reform and recollection* (Calabresi 2016). In what became more than a six-hour-long adventure, young scholars debated different points of the book and professor Calabresi, without showing any sign of tiredness or loss of focus, replied. He gave us all in-depth comments and notable insights, and we are all particularly grateful to him. Without him this special issue would have been completely different.

2 Reading ‘The Future’

The Future of Law and Economics is a peculiar book, unique in the vast plethora of publications that nowadays make Law and Economics as a discipline. Written by one of its pioneers after half of a century of working and mentoring multiple notable L&E scholars, at a time in which the tradition is undergoing a substantial transformation due to empirical and behavioral turn in economics, the book addresses the question that has been a source of deep tension in L&E from its beginnings – how to appreciate law in an approach that has been dominated by the economic world-view.

That Calabresi has hit the mark with this question, or has touched on a particularly sensitive issue for L&E scholars, can be seen by the large number of articles, comments and reviews that his book has stimulated since its publication.¹

Indeed, if one looks at Law and Economics today, both in terms of publications in its main journals and presentations in conferences, one sees that it is, in fact, an approach that pursues analysis of law from the standpoint of mainstream economics. Insofar as legal elements can fit economic theories or models, the economic analysts have accepted them as adequate objects for analysis and explanation. If they do not, these legal elements become disregarded.

Calabresi’s book, as well as the promise of a new future have been welcomed by all of us with a feeling of great expectation. Although the scholars of Law and Economics have been questioning about the future of their discipline for at least twenty years,² Calabresi’s book is perhaps the most significant attempt to address the problem of the relationship and the balance between Law and Economics, in the hope of a greater openness of Economics with regard to Law and lawyers.

This problem is paralleled by a number of arguments of law and economics scholars that have discussed on related issues in the past decade – however, in the book Calabresi is able to go substantially further (as we will see later on).

For example, Posner (2011) has expressed a related concern when, in his reflection on the future of the discipline he claimed that “the most distinctive and also troubling trend is the division of law and economics into two sub-disciplines — an “economics law and economics” and a “law law and economics.” According to him while the former is mathematical and descriptive in orientation, the latter is verbal and normative. For example, when it comes to contract law, practitioners of the former take it as a given in order to analyze how rational agents would design optimal contracts. On the other hand, the practitioners of “law law and economics” focus on how to design optimal contract law, not contracts.

Calabresi has a more historical, conceptual and methodological approach to this divide. He considers the future of the discipline by distinguishing between Law and Economics and Economic Analysis of Law, and connects the overtly economic approach to the latter. This argument draws its power from an understanding of the methodological divide in economics itself – which has been of central importance in the nascent phase of law and economics. Namely, the original conception of economics as developed by Smith (1776) and classical political economists implied that it is an endeavor that analyses all aspects of social life (law being one among them) in order to understand the creation of wealth in society. In the twentieth century a different conception emerged, that of the economic man – the rational utility maximizer that makes choices in relation to scarce resources. As Robbins (1932) acknowledged, this conception can be used to analyze any domain of social life as such, without a connection to wealth creation. The two diverging paths that were established in the early stages of Law and Economics relate to these two approaches: while thinkers like Coase (1960) and Calabresi and Melamed (1972) were interested in how law relates to welfare creation, Becker (1968) and Posner (1986)

established a tradition engaged in thinking about law as a form of social life populated by rational utility maximizers. The first involved an inquiry into the intricacies of legal system insofar as they affect the economy, while the second justified abstraction from those intricacies in order to apply economic models.

This historical foundation of the sub-disciplinary divide allows Calabresi to open space for a precise understanding of issues related to emerging need for specialization among researchers, rising technical complexity – and in particular the relationship between empirical work and theory. Other authors have argued that these have to do with the expansion of market for law and economics as an approach (Posner 2011) and could make the approach less understandable and applicable in law (*ibid.*) and policy (Van Den Bergh 2018). In that context, Calabresi's conception of law and economics as contrasted with the economic analysis of law, shows a path towards an approach that would weigh the benefits of technical sophistication with a clear goal of legal and policy relevance. He outlines an approach to theoretical arguments that goes beyond the simple activity of verification - which inquires whether the theory fits the world or not – towards the relationship in which the concepts that make up the theory are consciously derived from the world (e. g. concept of property rules derived from the legal world of property law) and, as a consequence, the theory is amplified by its relationship to the world.

In this regard, we decided to reproduce the introductory chapter (Ch.1) of Calabresi's book, "Of Law and Economics and Economic Analysis of Law: the Role of the Lawyer" (on which his Lecture for the Symposium was based), which summarizes his approach, and sets the course for the future. We have proposed several readings of this future. But before introducing them, it is worth remembering what we all shared in relation to Calabresi's approach: not only the aforementioned attempt to restore the balance between Law and Economics, but also his humanistic sensibility and interdisciplinary openness. Above all, we all shared the need to take into account and (re)analysing the "whole unanalysed experience of human race". These aspects are well summarized in the beginning of the book:

Of Bentham, Mill said that he approached all idea as a stranger and if they did not fit his test (the test of utility), he dismissed them as vague generalities. Mill then went on to say that what Bentham didn't realize was that "these generalities contained the whole unanalyzed experience of the human race". In my [Calabresi's] way of defining the terms, Bentham can be viewed as the paradigmatic Economic Analyst of Law, while Mill's approach is the precursor of that which characterizes Law and Economics. (Calabresi 2016: 1)

The stakes are very high (and Calabresi knows it well, especially in so far as he addresses his reflections mainly to a certain type of welfarist and consequentialist Economics (Calabresi 2017)): how should lawyers-economists reintroduce into Law and Economics the *whole unanalyzed experience of the human race*? How should lawyers-economists recover in the Economics all those values, preferences and individual tastes that are usually excluded from the "one-way" and sometimes "aggressive" (Calabresi 2016, 2) approach of the Economic Analysis of Law? How much of such unanalyzed human experience can be explained by Economics without altering its methodological values and norms, and how much of it would require another (or a new?) "Law and ... " approach?

Most of the central chapters (chs. 2–6) of Calabresi's book are an attempt to answer these questions. Of particular importance in this regard are the analysis of the merit (and demerit) goods – that is to say those goods that a "significant number of people do not wish to have 'priced'", and/or "goods whose allocation through the prevailing distribution of wealth is highly undesirable to a significant number of people" (Calabresi 2016, 26) – as well as the connected reflection on mechanisms of resource allocation that are located between the two extremes of the market ("commodification") and of the state ("commandification"). Hence the treatment of goods and values such as healthcare, education, the role of altruism and the problem of economic and power inequalities. Hence, again, the need for an amplification of economic theory, in order to take into account all these values and tastes. But the book does not end here, since in the last two chapters (chs. 7–8), mainly addressed to economists, Calabresi also tries to explain why "the suggested amplification of economic theory" should take into account "the actual – and unavoidable – existence of value judgments underlying much economic analysis", as well as how the economic analysis, "under quite traditional economic theory assumptions", might "give guidance as to the desirability of a variety of tastes and values". (Calabresi 2016, 21–22).

Economic analysts of law have rarely felt the need to answer these questions or address these methodological issues, and in the rare times when they chose to do that, they tended to push back by demanding reasons why one should consider these legal elements (e. g. Allen 2015; Barzel 2015) or deal with such methodological issues. As Calabresi recounts in the book: more than often have lawyer-economists been faced with the need to prove that legal elements difficult to account for within the economic framework are not nonsense upon stilts. In that way, those interested in intricacies of the legal system that engage in the economic analysis seem to inevitably get caught up in an uphill battle that in effect derails them from the path of discovery. Again, more than often have lawyer-economists not taken seriously "the actual – and unavoidable – existence of value judgments underlying much economic analysis".

However, as Calabresi has been reminding us both in the book and numerous talks, this has not always been the case and that it certainly does not have to be so in the future. Academic history, perhaps even more than other types of history, covers its tracks. Arguments and ideas ossify over time, and choices previously made become invisible so that the path taken begins to appear as a necessary one. Professor Calabresi, as a witness to this history from its beginning, has repeatedly attempted to uncover these choices with the hope that making them visible will create the possibility to choose differently. That has had a significant intellectually liberating effect as it allowed many to see what is actually within the horizon of possibility and take the paths not taken before that have been there from the outset.

Unlike his contemporaries and many of those that came after, Calabresi is known to treat law and economics as just one of the “law and ...” approaches that tackle legal issues drawing on theories of other social sciences. It is precisely for this reason that we invited scholars coming from different disciplinary backgrounds and not all specialists in Law and Economics, but researchers that focus on issues traditionally tackled by L&E approach utilizing different additional analytical tools. We did not want a simple ‘celebration’ of Calabresi’s book, nor a collection of comments or reviews of it (and we are sure that Calabresi too would not have liked such approach). We asked them to live up to Calabresi’s promise of a new future for Law and Economics and other “Law and ...” approaches, and to explore parts or chapters of his book with the aim of identifying the work that remains to be done and /or finding new directions of research.

Moreover, however young, these scholars share with professor Calabresi a clear reflective stance in their practice and special attention to the history of ideas they rely upon. With somewhat hermeneutical attitude they choose a riskier path with less short term gains in order to delve into the past of the discipline, re-read the foundational texts and capture the spirit and not only the word of the approach. They seem to have felt that the presence of history that invites the future embodied in professor Calabresi sitting among them offered a unique opportunity to reach an understanding inaccessible otherwise. That is probably the main reason why the event turned out to be such a success with participants continuing to discuss long after the planned time limit. That is probably a reason why the discussion did not stop after the lights of IUC went out.

The authors do not always agree with Calabresi but they carefully follow his thought process sometimes extending in the same direction and sometimes diverging in a different one. This is the way in which, we believe, the spirit of Calabresi’s promise can be kept alive.

3 This special issue

The structure of this special issue follows the logic of the Symposium held on Calabresi’s book: from more general, theoretical and/or methodological issues to more specific and/or applicative issues, up to the attempts to develop Calabresi’s thinking in new research directions. In this regard, it has not always been possible to follow the order of themes and chapters of Calabresi’s book, for at least two reasons. First, because both the introductory chapter and the last two chapters deal with theoretical and methodological questions that the contributors to this special issue have analyzed from different perspectives. Secondly, because some of the contributors’ articles provide cross-sectional readings of Calabresi’s book, even when they dwell on a specific theme or chapter.

The first group of five articles focuses mainly on methodological, theoretical or conceptual issues inherent in the way Calabresi tries to redefine the relationship between Law and Economics and Economic Analysis of Law and the relative thesis of the bilateral relationship between Law and Economics (but also theory and reality), the notion of moral costs and merit goods and the problem of value judgments in Economics.

The article by Paolo Silvestri, *On the (Methodological) Future of Law and Economics. The Uneasy Burden of Value Judgments and Normativity*, explores and dissects the methodological questions emerging from Calabresi’s book, with particular reference to the way in which Law and Economics has dealt superficially and often neglected the question of value judgments and normativity. Starting from the distinction between methodological value judgments and ethical value judgments, he shows how Calabresi’s bilateralism contains both types of judgments and how this mixture undermines the possibility of finding a clear line of demarcation between Economic Analysis of Law and Law and Economics. Being Posner pointed out by Calabresi as the paradigmatic example of the Economic Analysis of Law approach, Silvestri then asks whether Posner would consent to the methodological and value assumptions of bilateralism and therefore to the Law and Economics approach supported by Calabresi, and if there are further identities or differences between Calabresi and Posner on the notions of reformism and normativity. This allows Silvestri to introduce a notion of normativity based on the idea of “providing reasons for action”, which insinuates itself into positive analysis and into models of economic science, making the distinction between positive and normative much more nuanced. The article also shows the existence of an unresolved tension in Calabresi’s discourse between a positive approach, which seems to

be privileged in the book, and his insistence on the inevitability of value judgments in economic analysis. Finally, Silvestri focuses on Calabresi's thesis on the "ignorance of values" by economists showing the need to distinguish between economists' "lack of self-awareness", economists' idolatry and the economists' lenses.

The article by Giovanni Tuzet, *Calabresi and Mill. Bilateralism, Moral Externalities and Value Pluralism*, develops a reflection on the similarities and differences between Calabresi and Mill, the latter being pointed out by Calabresi as the paradigmatic example of the approach of Law and Economics and the related bilateralism. In this regard, Tuzet asks four questions: (1) is the bilateralism of Law and Economics praised by Calabresi a form of "reflective equilibrium"?; (2) is Mill's harm principle compatible with "third-party moral costs"?; (3) how are we to distinguish the moral externalities that are to be given weight from those that are not?; (4) how are we to adjudicate between welfare and equality, between a larger but less equal pie and a smaller but more equal one? With reference to the first question, and considering the notion of reflective equilibrium as originally sketched by Nelson Goodman's and then thematized by John Rawls, Tuzet answers in an affirmative way. To the second question, instead, he replies in a negative way, because Mill's 'harm principle' seems to be in contradiction with the weight attributed to some moral externalities in the legal systems considered by Calabresi. This makes it more difficult to find clear and precise answers to the last two questions, if and to the extent that in contemporary legal systems there is always the need to balance values and principles, and, above all, to the extent that value pluralism must be taken into account.

The next two articles focus on methodological questions concerning the need for Law and Economics and, in particular, economic theory and modelling to expand in order to incorporate and better account for human experience and its values.

In *The Uneasy Case for Parsimony in (Law and) Economics: Conceptual, Empirical and Normative Arguments*, Peter Cserne asks the following question: to what extent and, above all, how and under what circumstances, the range of human motivations and actions – selfishness and altruism, calculating instrumental rationality and adherence to values, context-dependent concerns about the scope of markets and other allocation mechanisms – can be or should be accounted for in terms of (possibly non-standard) preferences and (possibly non-standard) costs? Cserne articulates his answer through three arguments revolving around the possibilities, merits and limits of a parsimonious use of the hypotheses and models of economic science. First, he claims that there are some good reasons to be parsimonious in accounting for values and tastes and to stick to some version of the *homo oeconomicus* model. And this is also what economists have been doing for a while. Secondly, he presents three arguments that economists can put forward in support of such parsimonious models. Third, he shows that the overall benefits of parsimony are not always clear, and highlights several limitations of this parsimonious modelling. Cserne also shows that much of the discussion about the parsimonious use of hypotheses and models requires distinguishing between conceptual, empirical and normative aspects. In particular, he raises doubts about the conceptualization of value judgments as simple preferences or as moral costs, without however implying a clear refusal of rational choice models. Basically, the merits and demerits of parsimony inevitably depend on the context: what is legitimate or desirable in some contexts and for some purposes might be wrong in others. Therefore, there is no one right answer to the question of whether parsimonious models are appropriate: it is an uneasy case.

In turn, Regis Lanneau reformulates the problem from another perspective: *To What Extent Should we Enrich Law and Economics?* In particular, he wonders how the thesis supported by Calabresi regarding the need to "amplify" or "expand" economic theory and models used by Law and Economics should be interpreted. According to Lanneau there are at least three possible meanings and implications inherent to the "amplification" process, not necessarily incompatible with each other. First, Lanneau believes that Calabresi's thesis can be understood as an attempt to encourage jurists and economists to explore rather than exploit economic theory. Secondly, the idea of incorporating some concepts developed by Calabresi into economic theory, such as moral costs and merit goods, would allow a better understanding of legal reality. Finally, an expanded economic theory, to the extent that it serves to analyze the real world, should involve transforming or directing the decision-making process for the better. Lanneau addresses and discusses each of these interpretations and implications. From an epistemological point of view, if the first interpretation could be widely accepted because it constitutes a weak claim, the second and third appear more problematic. On the one hand, in fact, it cannot always be maintained that an expanded economic theory improves our understanding of legal phenomena, but, on the contrary, it could even obscure such an understanding. On the other hand, the third interpretation, which conceives an expanded economic science in view of the decision-making process, raises a question which probably cannot be answered by economic theory alone.

In his paper *Calabresi on Merit Goods*, Maxime Desmarais-Tremblay provides a historical and conceptual analysis of the notion of merit goods revolving around the following questions: (1) What does Calabresi's conceptualisation of merit goods share with the main lines of arguments in the literature for justifying state provision of merit goods?; (2) What is Calabresi's contribution and how compatible is it with this literature?; (3) What is missing in Calabresi's conceptualisation?; (4) On what basis can we differentiate merit goods from

mere externalities that do not require public attention? After a brief analysis of the identities and differences between the concept of “merit wants” coined by Richard Musgrave and the concept of merit goods as developed and used by Calabresi, Desmarais-Tremblay shows how and why Calabresi’s conceptualisation is limited by its cost/benefit welfarist approach, and, at the same time, it leaves out important strands of justification for merit goods. Last but not least, Desmarais-Tremblay suggests that a theory of merit goods would gain from moving away from the emotivist conceptualisation according to which people feel bad about certain goods being traded for money to a conceptualisation of the reasons for allocating specific goods to specific institutions.

The last four articles are a particular application and development of Calabresi’s discourse, in the double sense of pointing out further research paths as well as new forms of collaboration and interaction between Law and Economics, lawyers and economists.

Aleksandar Stojanović’s *Commons in the Past and the Future of Law and Economics* explores the role of commons in Law and Economics. He begins by reconstructing the argument made by Calabresi (2016) that the strength of Law and Economics has lied in its ability to amplify economic theory by consideration of external world. As Stojanović reminds, the spoilage of commons has played a central role in development of Law and Economics, in particular through the work of Harold Demsetz. Following an analysis of that conceptual construction, the article considers the ways that the success of commons could amplify the theory further. The article considers multiple ways in which that could be done – focusing on those that could lead to an amplification of Law and Economics theory as Calabresi understands it. Stojanović concludes that there are reasons to follow Calabresi’s own past work on role of values in institutional arrangements to move further in that direction.

In turn, Marco Fabbri’s *Shaping Tastes and Values through the Law: Law and Economics Meets Cultural Economics* proposes a theoretical framework for systematically including the discussion of tastes and values in the economic analysis of the law. The starting point is Calabresi’s claim that Law and Economics scholars should help and/or inform policy-makers and law-makers in their choices of which tastes and values are more desirable than others. Fabbri argues that Calabresi’s claim is supported by a welfaristic argument, at least for a set of tastes and values that the literature in cultural economics has identified as welfare-enhancing. In particular, two relevant conclusions can be derived from the empirical findings of Cultural economics: (1) that it is possible to identify a set of tastes and values which are key determinants of a society’s economic performance; (2) that the design of legal institutions has direct consequences – which can be predicted and empirically estimated – for the formation and persistence of these economically-relevant tastes and values. If this is true, Fabbri argues, then the analyst who compares alternative legal rules should: (1) include in the cost-benefit evaluation also the estimation of the effects on welfare-enhancing cultural traits associated to the choice of different institutional scenarios; (2) select specific tastes and values to be included in the analysis on the basis of the available empirical evidence that the cultural traits under consideration have been proven to be welfare-enhancing. On this basis, the Law and Economics analyst can engage in empirically founded normative arguments regarding which values and tastes should be promoted by the law-making process.

The last (but not at all the least!) two contributions, provide further reasons why Economics does need Law and Law does need Economics.

The paper *On the fitness between law and economics: Or Sunstein between Posner and Calabresi* by Fabrizio Esposito tries to push Calabresi’s attempt to balance the relations between Law and Economics forward, claiming further reasons in favour of legal scholars and legal expertise. In this regard he proposes not so much to “expand” or “amplify” economic theory or economic models, but for there to be sufficient conditions for a reciprocal, respectful and fruitful dialogue between economists and lawyers. Methodologically, the fitness analysis of Law and Economics requires studying legal reasons and reasoning. From this perspective, Sunstein’s research on minimalism resonates well with and strengthens Calabresi’s project for at least two reasons: (a) judicial minimalism incorporates a commitment to legal reasons that is shared by Law and Economics; (b) the reasons in favour of a minimalist approach also apply to the relationship between legal and economic research. Esposito concludes with a sketch of how a minimalist approach contributes to a bilateral relationship between Economics and Law, and how lawyers could help economists especially with regard to the justification of value choices.

Luisa Scarcella’s *Fundamental Rights and Merit Goods: The Case of the VAT Exemptions in the Public Interest* takes the European VAT System as a perfect example of the importance of a Law and Economics approach when analysing whether already adopted measures should be confirmed, abandoned or modified. In turn, we would add, Scarcella’s paper is a perfect example of application of Calabresi’s claim:

The ultimate choice of structures that a legal system makes must reflect this inability to do more than some things well. It must, in effect, do a very complex job of joint maximization. And this choice among structures, not so incidentally, is once again a reason why law does need economics. (Calabresi 2016, 52)

If Economics is helpful in analysing the economic effects of legal provisions, then the Law and Economics approach could be extremely beneficial when dealing with European VAT exemptions. Scarcella argues that the Law and Economics approach could: (1) make us reflect to which extent, provisions that can be considered expression of a specific fundamental right such as health, education, culture, might be at the same time

counterproductively eroding tax revenue, therefore preventing the concrete achievement of those fundamental rights; (2) provide us with a broader and more complete overview than the one deriving from a single field of study, necessary in order to consider alternative paths for possible future improvements; (3) also help us to better reflect on the relation between tax exemption, fundamental rights and tax policy challenges.

Overall we think we all have provided reasons why Law does need Economics and Economics does need Law, and why there is still room for other “Law and ...” approaches.

There would still be a lot to say by way of introduction, but let us leave the reader to judge whether this Special issue on Calabresi’s book is, as we believe, a testament to the ‘richness’ of Calabresi’s *Future*, and whether these contributions have helped to identify further research paths and to indicate possible roads not (yet) taken.

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Notes

1 See at least: Bix (2018), Harel (2017), Leeson (2017), Marciano and Ramello (2019), Porat (2017), Smith (2018), Wang (2018), and Zamir (2017).

2 See, for example, the Symposium on “The Future of Law and Economics: Looking Forward”; in particular, the roundtable discussion held by Epstein et al. (1997), Epstein (1997); but also, among others, Ellickson (1989), Posner (1989), Mattei (2005), and Posner and Becker (2014).

Note: This article is the result of a common effort and a continuous dialogue between the two authors. In particular, section 1 is written by Aleksandar Stojanović, section 2 is the result of a two-handed writing, section 3 is by Paolo Silvestri.

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