

Syllabus

«Law, Economics and Society: Innovative approaches to legal analysis»

1. Course Description

a. Title of a Course

“Law, Economics and Society: Innovative approaches to legal analysis”

b. Pre-requisites

none

c. Course Type (compulsory, elective, optional)

compulsory

d. Abstract

The course will provide students an advanced and critical introduction to the interaction of law with economic concepts and reasoning and a taster for empirical legal studies approaches in law. The course will examine the economic foundations of legal systems and the legal foundations of economic doctrines in order to introduce participants to the intricacies of the legal-economic nexus. The first part of the course will explore the various strands of neo-liberal economic thought which has shaped legal systems around the world and heterodox alternatives. We will focus on the different perspectives brought in the conceptualization of property rights (including intellectual property), liability rules and regulatory alternatives. We will also explore the legal innovations that were put in place in order to facilitate the constitution of global markets and in order to support market transactions. The second part of the course will delve into the conceptual and institutional foundations of a market economy. We will focus on the social construction of markets and their properties, as well as the market-making role of economists who devise innovative technical instruments (“market devices”) that intervene in the shaping and reshaping of markets and ensure their performance. We will explore how the legal system has assisted this market-creating effort so far, as well as the intense collaboration between different professions in order to ensure the performativity of markets. The recent turn of both economics and the law to promoting innovation will constitute the intellectual backbone of the course. In this effort we will explore the legal-economic nexus in various industries, such as finance, the food sector, biotechnology and pharma. In addition to the classic legal texts, readings will include foundation texts in law and economics, science and technology studies, political economy, economic sociology, innovation economics and sociology.

2. Learning Objectives

Main purpose of the course is to make students able to critically understand the interaction of law and economics in practice, to reflect on the role of the various actors (lawyers, economists) in shaping the rules of the game, to understand the social construction of markets and the importance of empirical approaches in studying law.

3. Learning Outcomes

Students must gain *knowledge* on:

- The foundations of the law and economics of innovation;
- The foundations of market institutions and of institutions supporting markets;
- The foundations of economic sociology and sociology of markets;
- The foundations of empirical legal studies research.

Skills and abilities:

- to use specific terms and sources of law and economics and sociology of markets;
- practical abilities of research, analysis of judicial decisions and scientific works in political economy and sociology;
- skills to analyze and solve cases, building up of the legal position and consideration of economic interests by taking an empirical legal studies perspective;
- skills to design and manage an empirical legal studies project.

Students should gain the following competences:

- ability to work with information (search, evaluate, use information, necessary for fulfilment of scientific and professional tasks, from various sources, including application of the systematic approach);
- ability to carry out professional activities in the international environment;
- ability to search, analyse, and work with legally relevant information by using the juridical, socio-legal comparative and other specific methods,
- ability to describe legal problems and situations in the field of innovation law.

4. Course Plan

1. Foundations of the economic/legal system supporting innovation

- 1.1. Neo-liberalism and neo-classical legal thought and their critics
- 1.2. Property rights
- 1.3. The innovation system
- 1.4. Organizing market and non-market transactions—commons, public domain, private property
- 1.5. Competition and Cooperation
- 1.6. Case studies

2. The socio-legal and institutional foundations of markets supporting innovation

- 2.1. The social construction of markets and the making of an industry
- 2.2. Market devices for innovation
- 2.3. Decoding finance for innovation
- 2.4. The proliferation of social currencies: the new frontiers of innovation
- 2.5. Economic experiments and innovation
- 2.6. The performativity of markets for innovation: global and local perspectives
- 2.7. Building institutions for innovation and its diffusion
- 2.8. Case studies

2. Reading List

a. Required

- Herbert Hovenkamp, *The Opening of American law- Neoclassical Legal Thought, 1870-1970* (OUP, 2014).
- Yanis Varoufakis, *Foundation of Economics: a Beginner's Companion* (Routledge, 1998)
- Reader for the course “*Law, Economics and Society: Innovative approaches to legal analysis*” (in electronic form). Ed. by I. Lianos (Hereinafter: *Reader*).

b. Optional

- Luc Boltanski & Laurent Thévenot, *On Justification: Economies of Worth* (Princeton University press, 2006)
- Pierre Bourdieu, *The Social Structures of the Economy* (Polity Press, 2005)
- Michel Callon, *The Law of the Markets* (Blackwell, 1998)
- Michel Callon, Yuval Millo, Fabian Muniesa (eds.), *Market Devices* (Blackwell, 2007).
- Neil Fligstein, *The Architecture of Markets – An Economic Sociology of Twenty-First Century Capitalist Societies* (Princeton University press, 2011)
- Aristides Hatzis and Nicholas Mercuro (eds.), *Law and Economics: Philosophical Issues and Fundamental Questions* (Routledge, 2015)
- Albert O. Hirschman, *The Strategy of Economic Development* (Yale University Press, 1958)
- William H. Janneway, *Doing Capitalism in the Innovation Economy: Markets, Speculation and the State* (Cambridge University press, 2012)
- David Kennedy & Joseph Stiglitz, *Law and Economics with Chinese Characteristics* (Oxford, 2013)
- Donald McKenzie, Fabian Muniesa, Lucia Siu (eds.), *Do Economists Make Markets?* (Princeton University press, 2007).
- Donald McKenzie, *An engine, not a camera: how financial models shape markets?* (MIT press, 2006)
- Marianna Mazzucato, *The Entrepreneurial State* (Anthem Other Canon Economics, 2013)
- Nicholas Mercuro & Steven Medema, *Economics and the Law* (2nd ed., Princeton University Press, 2006)
- Douglas North, *Institutions, Institutional Change and Economic Performance* (Cambridge University Press, 1990)
- Richard Swedberg, *Principles of Economic Sociology* (Princeton University press, 2003)
- Roberto Unger, *Law in Modern Society* (The Free Press, 1976)

3. Grading System

Exams or individual project; rating system (incl. written and oral tasks, presentations, written tests and Moot courts).

4. Guidelines for Knowledge Assessment

The current and inter-mediate control of knowledge has been carried out on the basis of accumulative system of points gained by the participants for:

- tests written in class (regular control of theoretical knowledge) or individual project,
- presentations,
- reports.

5. Methods of Instruction

- use of interactive educational technologies (lectures, Socrates method, work in small groups);
- use of ratings and accumulative system of control.

6. Special Equipment and Software Support (if required)

Power-point, LMS, Internet.

- Students will be asked to read if possible all the “required readings” before the seminar. During the seminar, they will be asked to treat specific topics, drawings on these readings and working in small groups. Students will also be asked to prepare a brief note of no more than 1000 words commenting on three of the readings. In addition, student presentations will take place during the seminar on the specific case studies. There will be two presentations on seminars 2, 3, 4 and 5. The presentations will be prepared and presented by two or three students.
- Each student is encouraged to develop an individual empirical legal studies project related to the broad topics covered by this course on the basis of their internship experience. These projects will be presented during the third part of this course.
- An introduction to empirical legal studies methodology will be presented at the beginning of Term 2.

TERM 1 (September 2015 – December 2015)

PART I: Foundations of the economic/legal system supporting innovation

Seminar 1: Neo-liberalism, neo-classical legal thought and the (bumpy) road to development

Required reading

Introducing the concepts:

David S. Grewal & Jedediah Purdy, Law and Neoliberalism, 77 *Law and Contemporary Problems* 1-23 (2015). Available at: <http://scholarship.law.duke.edu/lcp/vol77/iss4/1>

Herbert Hovenkamp, A Preface to Neoclassical Legal Thought (June 27, 2011). Available at SSRN: <http://ssrn.com/abstract=187347>

Amartya Sen, The Concept of Development, *Handbook of Development Economics*, Vol. 1 (1988), available at http://ivut.iut.ac.ir/content/300/5915.THE_CONCEPT_OF_DEVELOPMENT.pdf

An economic sociology perspective on markets:

Neil Fligstein and Luke Dauter, The sociology of markets, *Annual Review of Sociology*, 33, 105-128 (2007), available at http://sociology.berkeley.edu/sites/default/files/faculty/fligstein/ANRV316-SO33-06_001-024_.pdf

The Virtue Ethics of Markets:

Marion Fourcade and Kieran Healy, Moral Views of Market Society, Annual Review of Sociology 33: 285-311 (2007), available at <http://kieranhealy.org/files/papers/moral-views-ARS.pdf>

Case study: Analysing the global food value chain

Philip McMichael, Value-chain Agriculture and Debt Relations: contradictory outcomes, Third World Quarterly, 34:4, 671-690 (2013)

KPMG International, The agricultural and food value chain: entering an new era of cooperation (2013), available at <https://www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/Documents/agricultural-food-value-chain-report.pdf>

Koen Backer & Sébastien Miroudot, Mapping Global Value Chains (European Central Bank, Working paper Series, 2014, No. 1677), available at <https://www.ecb.europa.eu/pub/pdf/scpwps/ecbwp1677.pdf>

Further reading

On neoliberalism, neoclassical legal thought and markets

Michel Foucault, The Birth of Biopolitics: Lectures at the College De France, 1978-1979 (Palgrave MacMillan, 2010). Chapters 5, 9.

Friedrich von Hayek. The Use of Knowledge in Society. American Economic Review 35(4): 519-530 (1945).

Ronald Coase, The Problem of Social Cost. Journal of Law and Economics 3(1): 1-44 (1960).

Garry Becker, Nobel Lecture: The Economic Way of Looking at Behavior. Journal of Political Economy 101(3): 385-409 (1993).

Johanna Bockman and Gil Eyal. Eastern Europe as a Laboratory of Economic Knowledge: The Transnational Roots of Neoliberalism, American Journal of Sociology 108(2):310-352 (2002).

On development

Albert O. Hirschman, The Strategy of Economic Development (Yale University Press, 1958)

Karla Hoff & Joseph Stiglitz, Modern Economic Theory and Development, World Bank Policy Research Working Paper Series, Vol. , pp. -, (2008) available at https://www0.gsb.columbia.edu/faculty/jstiglitz/download/2000_Modern_Economic_Theory_and_Development.pdf

James Cypher & James Dietz, The Process of Economic Development (Routledge, 3rd edition, 2009)

Gerald M. Meier, *Biography of a Subject: An Evolution of Development Economics* (Oxford University Press, 2005)

On social structures and economic outcomes

Mark Granovetter, The Impact of Social Structures on Economic Outcomes. *Journal of Economic Perspectives*. 19(1):33-50 (2005).

On Markets and Morality

Deirdre McCloskey, *The Bourgeois Virtues. Ethics for an Age of Commerce*. The University of Chicago Press (2006)

On the food value chain

Boston Consulting Group, *Crop Farming 2030 – The Reinvention of the Sector* (April 2015), available at <https://www.bcgperspectives.com/content/articles/process-industries-innovation-crop-farming-2030-reinvention-sector/>

Questions to explore before the seminar

- Grewal and Purdu note the “ongoing contest between the imperatives of market economies and non-market values”. They argue that neo-liberalism sides with market economies imperative, as opposed to non-market values. But can markets be thought outside the neoliberal paradigm? Is the distinction between “market values” and “non-market values” meaningful? What do the authors mean when they explain that “neoliberalism has shielded market relations from particular kinds of politicization”? Do you agree with their arguments?
- Hovenkamp observes that marginalism “is the strongest identifying characteristic of neoclassical thought”. What were the implications of marginalist revolution for economic and legal thinking? How does marginalism relate, or not, to evolutionary thinking and Darwinism, the second important idea influencing neoclassical thought? How do the marginalist and Darwinian evolutionary approaches feed in the emergence of neoliberalism?
- One may argue that there is evidence that markets may lead to economic development, if the latter concept is perceived as referring to growth. But would that be the type of development Sen has in mind in his article? In what sense, Sen’s concept of development is broader than the concept of growth?
- Economic sociology starts from the premise that markets are not an “unstructured, haphazard, one-shot, anonymous social exchange” but are always embedded in social life and structures relying on formal and informal rules and convention dependent on governments, laws, and larger cultural understandings supporting market activity. Comment on the above statement thinking of the case study on the global food value chain.
- Is the argument for markets only an utilitarian one, that is that markets bring usually more prosperity, or can one make an ethical argument for, or against, markets? What are the “moral views of market society”?

Seminar 2: Commodification, valuation, commensuration, closure, and exploitation: Property rights in a social context

Required Reading

On commodification

Karl Marx, The Fetishism of Commodities and The Secret Thereof, In *Capital* Volume I (1867), available at <http://web.stanford.edu/~davies/Symbsys100-Spring0708/Marx-Commodity-Fetishism.pdf>

Margaret Jane Radin, Market-Inalienability, 100 Harvard Law Review (1987).

On valuation

Marion Fourcade, Cents and Sensibility: Economic Valuation and the Nature of 'Nature', *American journal of Sociology*, 116(6): 1721-1777 (2011)

Michèle Lamont, Toward a Comparative Sociology of Valuation and Evaluation, *Annual Review of Sociology*, 38:201–21 (2012)

On commensuration

Wendy Nelson Espeland & Mitchell Stevens, Commensuration as a Social Process, *Annual Review of Sociology*, 24:313-343 (1998)

On property rights

Harold Demsetz, Towards a Theory of Property Rights, *The American Economic Review*, 57(2): 347-359 (1967)

Joseph E. Stiglitz, The Economics Behind Law in a Market Economy: Alternatives to the Neoliberal Orthodoxy, in David Kennedy & Joseph Stiglitz (eds), *Law and Economics with Chinese Characteristics* (Oxford University Press, 2013), pp. 153-186

David Kennedy, Some Caution about Property Rights as a Recipe for Economic Development, in David Kennedy & Joseph Stiglitz (eds), *Law and Economics with Chinese Characteristics* (Oxford University Press, 2013), pp.187-213

Case studies

Genes

Rene Almeling, Selling Genes, Selling Gender: Egg Agencies, Sperm Banks, and the Medical Market in Genetic Material. *American Sociological Review* 72(3): 319-340 (2007)

Rochelle Cooper Dreyfuss and Dorothy Nelkin, *The Jurisprudence of Genetics*, 45 *Vanderbilt Law Review* 313 (1992)

Digital identity

Boston Consulting Group, *The Value of Our Digital identity* (Liberty Global Series, 2012), available at <http://www.libertyglobal.com/PDF/public-policy/The-Value-of-Our-Digital-Identity.pdf>

Further Reading

On commodification, valuation and commensuration

Karl Polanyi, *The Great Transformation* (Beacon Press, 1971, 1944 first ed.)

Margaret Radin, *Contested Commodities* (Harvard University Press, 2001)

Luc Boltanski & Laurent Thévenot, *On Justification: Economies of Worth* (Princeton University Press, 2006)

Michel Callon, Introduction: the embeddedness of economic markets in economics, in M. Callon, (ed.), *The laws of the markets*, (Oxford, Blackwell, 1998), 1-57

On property rights

Yoram Barzel, *An Economic Analysis of Property Rights* (Cambridge University Press, 2009, 2nd ed.)

Thrain Eggertsson, *Economic Behavior and Institutions* (Cambridge University Press, 1990)

Questions to explore before the seminar

- What does Marx mean by “fetishism of commodities” and why does this arise in commodity-producing societies? Why, for instance, the “fetishism of commodities would not arise in an economic system based on feudalism, a peasant family farm or a Robinson Crusoe island setting? How does this debate relate to his discussion of the exchange value and how does he conceptualize this value? Do you find his arguments convincing?
- What is the added value of the concept of “market-inalienability” and how this may be distinguished from clear inalienable goods? Can you think of situations of partial market-inalienability? How would you classify “digital identity”? What is the function of “consent” in this context?
- Utility, price and cost benefit analysis ratios constitute examples of commensuration. Can you think of other examples of commensuration tools? The development of these technologies of commensuration has been thought as essential in order to enable calculation perceived as a strategy reducing uncertainty and rationalized quantitative-based decision-making. Incommensurables are things regarded as unique and thus not subject to quantitative

valuation. Espeland and Stevens think that commensuration is a social process. Reading the two cases studies on genetics and digital identity, think of the social processes and orders of worth that led to the commensuration in the specific context.

- Closure and exploitation constitute two important dimensions of private property rights. Demsetz, views private property rights as being linked to social costs (externalities). He notes that “(a) primary function of property rights is that of guiding incentives to achieve a greater internalization of externalities” and that “(p)roperty rights develop to internalize externalities when the gains of internalization become larger than the cost of internalization”. This trade-off ratio (remember a commensuration tool) implies that private property rights will expand either because the benefits will rise or because the costs will fall. Implement Demsetz’ framework to the case studies on “genes” and “digital identity” and examine the relation between commons and private property in this context.
- In what sense Stiglitz’s and Kennedy’s view on property rights differs from Demsetz’s theory? Are distributive concerns, such as the distribution of access to resources, relevant in Demsetz’s approach and if so in what sense?

Seminar 3: The Innovation System: Property Rights and Alternatives

Required Reading

Property rights on intangibles

Ioannis Lianos & Rochelle Dreyfuss, New Challenges in the Intersection of Intellectual Property Rights with Competition Law: A View from Europe and the United States, CLES Research Paper 4/2013, available at <https://www.ucl.ac.uk/cles/research-paper-series/research-papers/cles-4-2013> (Read pp. 6-37)

Keith Maskus, *Private Rights and Public Problems, The Global Economics of Intellectual Property in the 21st Century* (Petersoin Institute for International Economics, 2012), pp. 25-64 (up to Intellectual Property Rights and Technology Transfer)

William Lazonick & M. Mazzucato, The risk-reward nexus in the innovation-inequality relationship: who takes the risks? Who gets the rewards? *Industrial and Corporate Change*, 22(4): 1093-1128 (2013).

James Bessen & Michael J. Meurer, "If you can't tell the boundaries, then it ain't property", Chapter 3 in J. Bessen & M. Meurer, *Patent Failure: How Judges, Bureaucrats, and Lawyers Put Innovators at Risk* (Princeton University Press, 2009)

Intellectual Production without Intellectual Property

Yochai Benkler, 'Sharing Nicely': On shareable goods and the emergence of sharing as a modality of economic production, 114 Yale L. J. 273 (2004)

Rochelle Cooper Dreyfuss, Does IP Need IP? Accommodating Intellectual Production Outside the Intellectual Property Paradigm (April 1, 2010). Cardozo Law Review, Vol. 31, No. 5, 2010; NYU School of Law, Public Law Research Paper No. 10-43; NYU Law and Economics Research Paper No. 10-34. Available at SSRN: <http://ssrn.com/abstract=1639590>

The role of the State in promoting innovation

Marianna Mazzucato, *The Entrepreneurial State Debunking Public vs. Private Sector Myths*, (Anthem Press, 2013) (read in particular Chapters 1, 2 and 3)

Case Studies

Protection for Plant Innovation

Mark D. Janis, Patenting Plants, in Ruth L. Okediji and Margo A. Bagley (eds.), *Patent law in Global Perspective* (Oxford University Press, 2014), available at http://law.indiana.edu/lawlibrary/services/bibliography/doc/Patenting_Plants.pdf

Haley Stein, Intellectual Property and Genetically Modified Seeds: The United States, Trade, and the Developing World, 3 North Western Journal of Technology & Intellectual Property 151 (2005).

Allesandro Nuvolari & Valentina Tartari, Innovation, Appropriability and Productivity Growth in Agriculture: A Broad Historical Viewpoint, in M. Cimoli,, G. Dosi, K. Maskus; R. Okediji; J. Reichman; J. Stiglitz (2014), *Intellectual Property Rights: legal and Economic Rights for Development* (Oxford University press, 2014), 242-261

Green innovation

Chatham House Energy, Intellectual Property and Alternatives: Strategies for Green Innovation, Environment and Development Programme Paper No. 08/03, December, 2008 available at: http://www.chathamhouse.org/sites/default/files/public/Research/Energy,%20Environment%20and%20Development/1208eedp_duke.pdf

Marianna Mazzucato, *The Entrepreneurial State Debunking Public vs. Private Sector Myths*, (Anthem Press, 2013) (Read Chapters 6, 7 and 8)

Further Reading

Mark Lemley, Ex Ante versus Ex Post Justifications for Intellectual Property, (2004) 71 University of Chicago Law Review 129

Michele Boldrin & David K. Levine, The Case Against Patents, Federal Reserve Bank of St Louis, Working Paper 2012-035A (September 2012), available at <http://www.research.stlouisfed.org/wp/2012/2012-035.pdf>

Questions to explore before the seminar

- The current debate on intellectual property rights raise a number of important issues concerning the strategy and policies for building a more dynamic national agricultural research system and the related roles of the public and private sectors, as well as that of multinational corporations. Assess the costs and benefits of expanding property rights on plant varieties and what would be its implications for innovation incentives, as well as the different social actors involved in the agriculture. What is the appropriate role of the public and private sectors in the national or global research system regarding agricultural research?
- Publicly funded gene banks and new varieties bred by the public sector research units may be used by private enterprises in order to develop their own varieties and seek patent protection for them? Should private breeders be allowed to use this information or should they be asked to pay for their use, in which case how would this compensation be evaluated?
- Are property rights always the best instrument to incentivize innovation? How would you explain the emergence of a culture of sharing and intellectual production without intellectual property in various industries?

Seminar 4: Organizing market and non-market interactions –commons, public domain, private property

Required Reading

Commons, Public Domain and Private Property

Garrett Hardin, The Tragedy of the Commons, *Science*, 162:1243–1248 (1968)

Charlotte Hess and Elinor Ostrom, Introduction: An Overview of the Knowledge Commons, *Understanding Knowledge as a Commons* (MIT Press, 2006), 3-27, available at http://mitpress.mit.edu/sites/default/files/titles/content/9780262083577_sch_0001.pdf

Michael A. Heller, The Tragedy of the Anticommons: Property in the Transition from Marx to Markets, *Harvard Law Review* 111(3):622–688 (1998)

James Boyle, The Second Enclosure Movement and the Construction of the Public Domain, *Law and Contemporary Problems*, 66(1–2):33–74 (2003)

Ugo Mattei, First Thoughts for a Phenomenology of the Commons, in D. Bollier & S. Helfrich (eds.), *The Wealth of the Commons – A World Beyond Market and State*, available at <http://wealthofthecommons.org/essay/first-thoughts-phenomenology-commons>

Intellectual Property, Commons and the Public Domain

Arti K. Rai & James Boyle, Synthetic Biology: Caught Between Property Rights, the Public Domain, and the Commons, 5 *PLoS Biology* 389-393 (2007), also available at http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2296&context=faculty_scholarship

Michael Heller & Rebecca S. Eisenberg, Can Patents Deter Innovation? The Anticommons in Biomedical Research, *Science* 280(5364): 698–701 (1998)

Yochai Benkler Commons-Based Strategies and the Problems of Patents, *Science* 305(5687):1110–1111 (2004)

Case Studies

Biotech, open source and patent protection

Arti K. Rai, Open and Collaborative Research: A new Model for Biomedicine, in *Intellectual property Rights in Frontier Industries: Software and Biotech* (AEI Brookings Press, 2005) available at http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1769&context=faculty_scholarship

Yusing Ko, An Economic Analysis of Biotechnology Patent Protection, 102 *The Yale Law Journal* 777 (1992), available at http://www.jstor.org/stable/796918?seq=1#page_scan_tab_contents

The Law and Economics of Open Source

Josh Lerner & Jean Tirole, The Economics of Technology Sharing: Open Source and Beyond, 19 Journal of Economic Perspectives 99 (2005) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=620904

Robert Merges, From Medieval Guilds to Open Source Software: Informal Norms, Appropriability, Institutions and Innovations (2004) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=661543

Genome Commons

Jorge L. Contreras, Jorge L., Constructing the Genome Commons (July 30, 2014). Governing Knowledge Commons. B. Frishcman, M. Madison & K. Strandburg, eds. 2014 (Oxford)). Available at SSRN: <http://ssrn.com/abstract=2474405>

Land Grabbing

World Bank, Rising Global Interest in Farmland (2010), available at <http://siteresources.worldbank.org/DEC/Resources/Rising-Global-Interest-in-Farmland.pdf>

Philip McMichael, The land grab and corporate food regime restructuring, The Journal of Peasant Studies, 39(3-4):681-701 (2012)

Catherine Corson & Kenneth Iain MacDonald, Enclosing the global commons: the convention on biological diversity and green grabbing, The Journal of Peasant Studies, 31(2): 263-283 (2012)

Further Reading

Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press, 1990)

Charlotte Hess & Elinor Ostrom, *Understanding Knowledge as a Commons* (MIT press, paperback, 2011)

David Bollier & Silke Helfrich (eds.), *The Wealth of the Commons – A World beyond Market and State*, available at <http://wealthofthecommons.org/contents>

B. Frishcman, M. Madison & K. Strandburg (eds.), *Governing Knowledge Commons*, (OUP, 2014)

Joseph Eng, Jr., From Software to Life Sciences: The Spreading of the Open Source Production to New Technological Areas, 24 Temple Journal for Science, Technology and Environmental law 419 (2005)

Amy Kapczynski, Access to Knowledge: A Conceptual Genealogy (December 2010). Access to Knowledge in the Age of Intellectual Property, Gaelle Krikorian & A. Kapczynski (eds.), (Zone Press 2010), available at SSRN: <http://ssrn.com/abstract=1754686>

Questions to explore before the seminar

- Compare the conceptualization of commons in the following articles: (i) Garret Hardin, (ii) Charlotte Hess/Elinor Ostrom and (iii) Ugo Mattei. Are their premises different and in what sense? With whom would you agree the most?
- Should one distinguish “commons” from “public property” and the “public domain” and for what reason?
- According to Heller and Eisenberg, patent protection as a two-edged sword: It may spur innovation by securing to inventors the fruits of their labours but it may also create a thicket that gives each patent holder a potential veto right over the innovations of others (the tragedy of anti-commons). Would blocking competitors and eventually stopping their cumulative innovation efforts constitute a reason for patenting? How would one deal with the situation of the tragedy of anticommons?
- Recent advances in genomics (and other biotech fields) and the vast quantities of genetic data produced may have transformed biomedical science to an uncongested public resource. How would the development of technology solve the anti-commons problem and would the implications be for patent policy?

Seminar 5: Competition and Cooperation

The Meaning of Competition from a Sociological perspective

Pierre Bourdieu, Principles of an Economic Anthropology, in *The Social Structures of the Economy*, (Cambridge, Polity press, 2005), pp. 193-216.

R. Burt, The social structure of competition, in Swedberg, R. (ed.), *Explorations in economic sociology* (New York, Russell Sage foundations, 1993), 65-103

E.M. Leifer & H.C. White., A structural approach to markets, in Mizruchi, M.S., Schwarz, M., (dir.), *Intercorporate relations: the structural analysis of business* (Cambridge University press 1987)

Defining relevant markets in competition law

Commission Notice on the definition of relevant market for the purposes of Community competition law (1997), available at [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y1209\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y1209(01)&from=EN) (Read paragraphs 1-24, 36-42)

David Evans, Lightning Up Market Definition (May 1, 2010), Research Handbook on the Economics of Antitrust law, Einer Elhauge (ed.) (Edward Elgar, 2010). Available at SSRN: <http://ssrn.com/abstract=1599270>

The optimal balance of competition and cooperation in technology markets: between property rights, liability rules and contract

Mark A. Lemley and Philip Weiser, Should Property or Liability Rules Govern Information?. Texas Law Review, 85: 783, (2007); Stanford Law and Economics Olin Working Paper No. 341; U of Colorado Law Legal Studies Research Paper No. 07-18. Available at SSRN: <http://ssrn.com/abstract=977778>

Robert P. Merges, Contracting into Liability Rules: Intellectual Property Rights and Collective Rights Organizations, California Law Review, 84(5): 1293-1393 (1996)

Case studies

Property rights or liability rules for the protection of databases?

Jerome H. Reichman and Pamela Samuelson, Intellectual Property Rights in Data?, 50 Vanderbilt L. Rev. 51, 137-139, 145-155 (1997)

Stephen M. Maurer, Bernt Hugenholtz, Harlan J. Onsrud , Europe's database experiment, Science (2001), available at <http://www.ivir.nl/publicaties/download/1070>

Guido Westkamp, Protecting Databases under US and European Law: Methodical Approaches to the Protection of Investments between Unfair Competition and Intellectual Property Concepts, 34 International Review of Industrial Property and Copyright Law 77 (2003)

Big data

Brad Brown et al., Are You Ready for the Era of “Big Data”?, MCKINSEY Q., Oct. 2011, available at http://www.mckinsey.com/insights/strategy/are_you_ready_for_the_era_of_big_data

The Economist Intelligence Unit, The Data Storm- Retail and the Big Data Revolution (2013), available at http://www.economistinsights.com/sites/default/files/The_Data_Storm_Web_1.pdf

Lindsey Gilpin, How big data is going to help feed nine billion people by 2050, Tech Republic, available at <http://www.techrepublic.com/article/how-big-data-is-going-to-help-feed-9-billion-people-by-2050/>

Randall Picker, Competition and privacy in Web 2.0 and the Cloud (John M. Olin Program in Law and Economics Working Paper No. 414, 2008), available at http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1113&context=law_and_economics

Pamela Jones Harbour, and Tara Isla Koslov, Section 2 in a Web 2.0 world: An expanded vision of relevant product markets, Antitrust Law Journal, 76: 769-797 (2010), available at <http://www.nortonrosefulbright.com/files/us/images/publications/20100816Section2InWebWorld.pdf>

The relation between suppliers and retailers: cooperation or competition?

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Philippe Chauve and An Renckens, The European Food Sector: Are Large Retailers a Competition Problem?, *Journal of European Competition Law & Practice* (2015) 6 (7): 513-529.

Further Reading

Herbert Hovenkamp & Eric N. Hovenkamp, Patent Pools and Related Technology Sharing (August 17, 2015). Available at SSRN: <http://ssrn.com/abstract=2645905>

Paul Geroski, Thinking Creatively About Markets, *International Journal of Industrial Organization*, 16 (1998):677–695.

John Vickers, Concepts of Competition, *Oxford Economic Papers*, 47(1) (1995):1-23.

Questions to explore before the seminar

- Examine the different definitions of the concept of competition provided by Bourdieu, Burt, Leifer and White and compare them with the concept of relevant market as this has emerged in the Guidelines of the European Commission on market definition. Are there any differences between the two concepts of competition? Which one would you consider more appropriate for public policy? Explain your conclusions.
- After reading David Evans' article on market definition ponder on the possibility to open up the concept of relevant market to the sociological views of competition. How would this be integrated in the existing concept? Would we need to abandon the concept of relevant market altogether and what would be the costs and benefits of such move? Explore these questions in view of the case studies on Big Data and the relation between suppliers and retailers in the food industries.
- Property rights, liability rules and contracting out have been presented as three discrete governance mechanisms in the context of technology markets. Assess their respective advantages and disadvantages by focusing on the protection of databases and explore the interaction between them.
- The emergence of Big Data will have important implications on the organization of technology markets and, more generally, the interactions between producers, intermediaries and consumers. Explore how the institutional arrangements governing the interaction between the above actors would look like and the respective role of property rights, liability rules and contract.