



# SECTION ON SOCIO-ECONOMICS NEWSLETTER

## Section on Socio-Economics Annual Meeting Program

Wednesday, January 7, 2009

San Diego Marriott Hotel and Marina

(Co-Sponsored by the Sections Minority Groups, Poverty Law, Securities Regulation, and Women in Legal Education)

### “Socio-Economic Ways to a Just and Prosperous Society”

- 8:45 - 9:00 Welcoming Remarks
- 9:00 - 10:00 Deans’ Forum on Socio Economics and Economic Justice
- 10:10 - 11:10 Concurrent Sessions
  - 1. Socio-Economic Perspectives on Sub-Prime Lending
  - 2. Law and Economics and the Theory of Second Best
  - 3. Family Formation and Wealth Inequality
  - 4. Wealth Distribution, Efficiency and Growth
  - 5. Teaching Socio-Economics in assigned courses
- 11:20 - 12:20 Open Round Table:  
Corporate Governance, Fiduciary Duties and Social Responsibility
- 12:30 - 2:00 Luncheon Address: Christopher F. Edley, Jr., Dean and Orrick Professor of Law  
(University of California - Berkeley School of Law)  
“The Obama Agenda and the Law School Agenda: The Socio-Economic Bridge”
- 2:10 - 3:10 Open Round Table:  
Socio-Economics and Racial Justice
- 3:20 - 4:20 Concurrent Sessions
  - 1. The Inefficient Capital Market Hypothesis
  - 2. Socio-Economics and the Critical Schools
  - 3. The Two Halves of Biolaw (Behavioral Biology and The Law of Biological Innovation)
  - 4. Socio-Economics and Faith in a Higher Power
  - 5. Healthcare and Poor and Working People
- 4:30 - 5:00 The Future of Socio-Economics

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(Society of Socio-Economists)  
Tuesday, Jan. 6, 2009
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#### Socio-Economics Reception

The Santa Clara University  
School of Law Reception  
for Alumni, Faculty, and Friends,  
and for Members of the  
Section on Socio-Economics  
7:00 - 9:00 p.m. January 7, 2009  
San Diego Marriott and Marina  
Orlando Room, Marriott Pavilion, Lobby Level

#### First Annual Meeting of Society of Socio-Economists

10:00 a.m. to 4:00 p.m.  
Tuesday, January 6, 2009  
at the Marriott

All AALS Registrants and Friends Welcome!  
Open-Forum Format  
If you would like to participate,  
e-mail name and phone number to  
<< [socioeconomics@aol.com](mailto:socioeconomics@aol.com) >>.

\*\*\* Please copy, post, and send to interested persons. \*\*\*

For more information, please contact Robert Ashford, Program Chair  
AALS Section on Socio-Economics, Syracuse University College of Law  
Syracuse, New York 13244; Tel (315) 677-4680; [rhashford@aol.com](mailto:rhashford@aol.com)

**Section on Socio-Economics  
Annual Meeting Program  
Wednesday, January 7, 2009**

**(Co-Sponsored by the Sections Minority Groups, Poverty Law,  
Securities Regulation, and Women in Legal Education)**

***“Socio-Economic Ways to a Just and Prosperous Society”***

- 8:45 - 9:00**            **Welcoming Remarks:**  
Robert Cooter, Section Chair (California - Berkeley)
- 9:00 - 10:00**           **Deans' Forum on Socio Economics and Economic Justice**  
Christopher Edley (California - Berkeley)  
Richard Gershon (Charleston)  
Dennis Honabach (Northern Kentucky)  
Donald Polden (Santa Clara)  
Edward Rubin (Vanderbilt)
- 10:10 - 11:10**           **Concurrent Sessions**
- 1. Socio-Economic Perspectives on Sub-Prime Lending:  
Sub-Prime Private Market Discipline  
and the Crises in Theory, Praxis and the Markets**  
William Black (Missouri - Kansas City)  
Timothy Canova (Chapman)  
Paul Davidson (Editor, Journal of Post Keynesian Economics)  
Henry N. Pontell (Criminology, California - Irvine)  
Charles Taylor (Director, Operational Risk, The Risk Management Association)
  - 2. Law and Economics and the Theory of Second Best**  
Richard Markovits (Texas)  
Thomas Ulen (Illinois)
  - 3. Family Formation and Wealth Inequality**  
June Carbone - Moderator (Missouri - Kansas City)  
David Meyer (Illinois)  
Radhika Rao (Hastings)  
Naomi Cahn (George Washington)
  - 4. Wealth Distribution, Efficiency and Growth**  
Morris Altman (Economics, Saskatchewan,  
Editor Journal of Socio-Economics)  
Robert Ashford (Syracuse)  
Demetri Kantarelis (Economics, Assumption College)  
Charles Whalen (Economic, Utica College,  
Editor Perspectives on Work )
  - 5. Teaching Socio-Economics in assigned courses**  
Edward Rubin (Vanderbilt)
- 11:20 - 12:20**           **Open Round Table: (All AALS Registrants Invited to Participate)**  
**Corporate Governance, Fiduciary Duties and Social Responsibility**  
Richard Buxbaum - Moderator (California - Berkeley)

**Annual Meeting Program**  
(continued)

**“Socio-Economic Ways to a Just and Prosperous Society”**

**Luncheon Address**

12: 30 -2:00 p.m.

**Christopher F. Edley, Jr.**

Dean and Orrick Professor of Law

University of California -Berkeley

Member, President-Elect Obama Transition Board

**"The Obama Agenda Meets the Law School Agenda:  
The Socio-Economics Bridge"**

(Tickets must be purchased from the AALS, by Tuesday, January 6, 2009)

- 2:10 - 3:10**      **Open Round Table: (All AALS Registrants Invited to Participate)**  
**Socio-Economics and Racial Justice**  
Charles Pouncy - Moderator (Florida International)
- 3:20 - 4:20**      **Concurrent Sessions**
- 1.      The Inefficient Capital Market Hypothesis**  
Robert Ashford (Syracuse)  
Paul Davidson (Editor, Journal of Post-Keynesian Economics)
  - 2.      Socio-Economics and the Critical Schools**  
Martha McCluskey (Buffalo)  
Charles Pouncy (Florida International)  
Steve Ramirez (Loyola - Chicago)
  - 3.      The Two Halves of Biolaw (Behavioral Biology and  
The Law of Biological Innovation)**  
June Carbone - Moderator (Missouri - Kansas City)  
Mark Lemley (Stanford)  
Dan Burk (Minnesota)  
Mark Janis (Iowa)  
Oliver Goodenough (Vermont)
  - 4.      Socio-Economics and Faith in a Higher Power**  
Larry Backer (Penn. State)  
Jorge O. Elora (Roger Williams)  
Lyman Johnson (Washington and Lee)
  - 5.      Healthcare and Poor and Working People**  
Arthur La France - Moderator: (Lewis and Clark)  
Kenneth Gatter (Oregon Health and Science University)  
Sharon Hoffman (Case Western)  
Frances Miller (Boston University)
- 4:30 - 5:00**      **The Future of Socio-Economics:  
(Roundtable of Day's Participants and Open Forum.)**

## PROGRAM DESCRIPTION

***Socio-Economic Ways to a Just and Prosperous Society***

Overview: The thirteenth Annual Meeting of the AALS Section on Socio-Economics, features six law school deans, twenty-three law professors, eight economists, and three criminologists. The program provides a rich array of sessions on socio-economic theory and practice regarding a diverse range of law-related economic issues that will prove both accessible to the law-teacher generalist and satisfying to those well schooled in economic theory.

**8:45 - 9:00 Welcoming Remarks****9:00 - 10:00 Deans' Forum on Socio Economics and Economic Justice**

Six law school deans supportive of socio-economics share their views on (1) the relationship between socio-economics and economic justice, (2) the importance of the socio-economic approach in legal education, and (3) ways to enhance the understanding and use of socio-economic analysis in legal education.

**10:10 - 11:10 Concurrent Sessions****1. Sub-Prime Private Market Discipline and the Crises in Theory, Praxis and the Markets**

Private market discipline is the core concept of modern finance and corporate law & economics. It underlies the efficient market and contracts hypotheses and agency cost theory. This century's series of crises, however have demonstrated that private market discipline can become an oxymoron. The private entities that are supposed to restrain fraud have become its most valuable allies. Chairman Volcker has observed: "Simply stated, the bright new financial system – for all its talented participants, for all its rich rewards – has failed the test of the market place."

Can socio-economics help explain the failure and suggest policies that could meet that test? Can regulatory actions help restore private sector actors' integrity and effectiveness? This session will explore these and related questions

**2. Law and Economics and the Theory of Second Best**

The General Theory of Second Best implies that, if one does not have the option of eliminating all imperfections in competition, all externalities, all taxes on the margin of income, all human errors, and all buyer surplus, then there is no general reason to believe that policies that reduce the extent of such imperfections will *even tend* to increase economic efficiency on that account. The intuitive explanation for this conclusion is that, in general, the imperfections one can eliminate will be as likely to compound as to counteract the net effect of the imperfections that cannot be or will not be eliminated. If valid, Second-Best Theory invalidates virtually all economic-efficiency analyses that law and economics scholars and economists more generally have executed. Part II of Richard Markovits' recent book *Truth or Economics* (1) explains the Theory of Second Best, (2) argues that a large number of canonical economic-efficiency analyses are invalidated by it, (3) develops an approach for generating economic-efficiency conclusions that responds appropriately to Second-Best Theory, and (4) uses this approach to analyze the economic efficiency of a wide variety of legal doctrines and policies. In this session, Professor Markovits will explain his position in terms that are both accessible to generalists and satisfying to experts. Professor Thomas Ulen will provide commentary.

**3. Wealth Distribution, Efficiency and Growth**

Socio-economists recognize that (1) at best the maximization of efficiency is only one component wealth maximization, and (2) wealth distribution matters not only normatively but also positively in understanding efficiency and growth. The growing wealth and poverty of nations (which was the subject of Adam's Smith's inquiry) is not synonymous with maximizing efficiency. Closely related to the distinction between efficiency and growth is the meaning of unutilized productive capacity in a time frame in which technology and capital investment are variables dynamically related prices. In

this session, three panelists explain these principles in way understandable both to veterans and novices in economic theory, and discuss some of the normative implications that flow from these principles.

**4. Family Formation and Wealth Inequality**

This panel focuses on the relationship between judicial decisions such as those guaranteeing a right of access to abortion and contraception, and the class, race, and economic dynamics underlying family formation. Sociological research shows that family formation has become an engine of inequality as the best educated quarter of women are the only group in society for whom marriage rates have increased. For this group, divorce rates and non-marital births have fallen back to the level of forty years ago, family income has risen substantially over the last thirty years, and these two parent families invest more parental time in children.

For the rest of the country, family problems magnify economic disparities and reduce the cushion available to get through hard times. In the last two years, an increase in teen births has threatened the progress made in controlling accidental pregnancies in the nineties, and fertility seems to be rising more generally.

What should the legal responses be to these developments, and how does socio-economics contribute to assessing the relationship between these developments and high profile judicial decisions about abortion, gender and sexuality?

**11:20 - 12:20 Open Forum: Corporate Governance, Fiduciary Duties and Social Responsibility**

Until recently, the long-standing debates of issues related to corporate governance, fiduciary duties, and social responsibility and those regarding the nature of the corporation (e.g. nexus of contracts, separate person, institution, public utility, social capital) have generally assumed (either explicitly or implicitly) a limited approach to "law and economics" that is more accurately called "law and neoclassical economics." This assumption is evident not only in the works of proponents of the law and neoclassical economic approach, but also in the works of its critics. Unlike the neoclassical approach, the socio-economic approach does not assume that an increase in efficiency will necessarily result in an increase in "the size of the pie." As a consequence, corporations may enhance corporate shareholder, and stakeholder wealth by taking a longer-term, more holistic view of wealth maximization. This panel considers whether the broader socio-economic approach to law-related economic issues provides a richer, more rigorous, and more lawyerly foundation for exploring, teaching and advocating various approaches to these important issues of corporate law.

***Luncheon Address****12:30 - 1:30 p.m.****Dean Christopher F. Edley, Jr***  
*(University of California -Berkeley)****"The Obama Agenda  
and the  
Law School Agenda  
The Socio-Economic Bridge"***

### 2:10 - 3:10 Open Forum: Socio-Economics and Racial Justice

Many law teachers believe that as the socio-economic approach to law-related economic issues becomes more widely understood and appreciated, the prospects for greater racial justice will be enhanced. This open forum will explore this proposition and other ways to improve legal education to enhance the prospects of racial justice.

### 3:20 - 4:20 Concurrent Sessions

#### 1. The Inefficient Capital Market Hypothesis

What relevance does John Maynard Keynes have to “law and economics”? In this session, Paul Davidson, editor of the *Journal of Post Keynesian Economics*, and author of the book *John Maynard Keynes*, (Great Thinkers in Economics Series) Palgrave, will explain why in the capitalist system in which we live, “the efficient capital market hypothesis is an oxymoron or in other words, “an impossibility.” According to Professor Davidson, because statistical probabilities regarding past risks, will consistently fail to provide statistically reliable forecasts of future risks in these markets, real capital markets cannot be efficient. Consequently, (1) the civil law of contracts (which is used by sellers and buyers to minimize risk and uncertainty and (2) the importance of maintaining liquidity in financial markets play crucial roles in understanding the operations of a money using, market oriented, entrepreneurial economy – both from a domestic national standpoint and in the context of a globalized economy where nations may employ different currencies and differing civil laws of contracts. Professor Davidson argues that if increasing wealth and distribution are goals of a market system, then rather than assume market efficiency, law and economic analysis would better serve society by proceeding with Keynes’s “inefficient capital market hypothesis” that constructively builds on the world as it inevitably is.

#### 2. Socio-Economics and the Critical Schools: Conflict, Cross-Fertilization and Synthesis

Socio-Economics as way of understanding law-related economic issues and as a paradigm for the organization and allocation of assets, resources, responsibilities, and opportunities, generally has been viewed by critical scholars as a “kinder, gentler” version of the neoclassical economic paradigm, a characterization that is not necessarily complimentary. However, socio-economics and critical legal studies, critical race theory, LatCrit theory, feminist legal theory and queer theory share many of the same concerns about the distributive consequences of mainstream economic theory, and all of these approaches aspire to the goals of protecting human dignity and promoting economic justice. This panel will offer a preliminary examination of the areas of commonality and conflict between socio-economics and the critical schools. Professor Steven Ramirez (Loyola - Chicago) will compare and contrast the understanding of power expressed by socio-economic theory with the role that concept plays in critical race theory and Lat/Crit theory; Professor Martha McCluskey (SUNY at Buffalo) will examine class from the perspectives of critical theory and feminist legal theory and compare that to the way class is understood and deployed in socio-economic theory, and Charles Pouncey (Florida International University) will explore the potential of binary economic theory in the attainment of the anti-subordination goals of critical race theory and Lat/Crit theory.

#### 3. The Two Halves of Biolaw: Behavioral Biology and the Law of Biological Innovation)

This panel draws on the two halves of bio-law: (1) law as the infrastructure for biotechnology and (2) biological understandings of legal developments, to critique Professors Mark Lemley and Dan Burk’s work on patent law. That work argues that the patent regime that governs biotechnology

differs in significant ways from application of the same patent requirements to information technology. Professor Mark Janis will critique the argument from the perspective of the importance of patent law to biotechnology; and Professor Oliver Goodenough will argue that the distinctions Professors Lemley and Burk draw corresponds to insights gleaned from behavioral biology. Professors Lemley and Burk will have an opportunity to respond. Professor June Carbone will serve as moderator.

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#### 4. Socio-Economics and Faith in a Higher Power

Socio-economics recognizes (1) that faith in a higher power affects economic behavior and (2) an understanding of how faith affects economic behavior will enhance one’s ability to address law-related economic issues. Yet much economic analysis of law proceeds without an explicit recognition of the impact of faith on economic behavior. This panel continues a socio-economic inquiry that began during the 2007 annual meeting.

#### 5. Medical Care and Poor and Working People

The panel will address current healthcare developments of very different kinds, with a focus on how each affects the poor and working people. Professor Frances Miller of Boston University will discuss the Massachusetts healthcare reforms, one year out, with comparison to the Hawaii experience, now decades out. Senior Associate Dean Sharona Hoffman of Case Western will discuss the national electronic health records reforms and their capacity to reduce health disparities. Professor Kenneth Gatter of Oregon Health and Science University will discuss the successes in pediatric oncology and the implications for adult cancer treatment among poverty patients. In varying degrees, each of these important developments stems from, or has implications for, social economics and justice. The panel will be chaired by Professor Arthur LaFrance of Lewis & Clark Law School.

#### 4:30 - 5:00 The Future of Socio-Economics

All the day’s participants will join in an open roundtable to discuss future of socio-economics.

### *First Annual Meeting of Society of Socio-Economists*

**10:00 a.m. to 4:00 p.m.**

**Tuesday, January 6, 2009**

**All AALS Registrants and Friends Welcome!**

The goal of the Society is to enhance appreciation value of the Socio-Economic approach in teaching, scholarship and service across all disciplines. The Society welcomes participation and presentations on any socio-economics-related subjects.

**If you would like to participate,**  
e-mail name and phone number to  
<< [socioeconomics@aol.com](mailto:socioeconomics@aol.com) >>.

**Join Today!**  
**Section on Socio-Economics**

Tel: 202-296-8851

Fax: 202-296-8869

net: AALS.org

Chair: Robert Cooter (Professor of Law and Economics, California - Berkeley)

Chair-Elect: Donald Polden, (Dean and Professor, Santa Clara)

Web Site for all Programs (1996-2008)  
 << journaloflawandsocioeconomics.com >>

Opinions expressed herein are not necessarily those of the Section and do not necessarily represent the position of the AALS.

## *Definition of Socio-Economics*

Socio-economics begins with the assumption that economics is not a self-contained system, but is embedded in society, polity, culture, and nature. Drawing upon economics, sociology, political science, psychology, anthropology, biology and other social and natural sciences, philosophy, history, law, management, and other disciplines, socio-economics regards competitive behavior as a subset of human behavior within a societal and natural context that both enables and constrains competition and cooperation. Rather than assume that the individual pursuit of self-interest automatically or generally tends toward an optimal allocation of resources, socio-economics assumes that societal sources of order are necessary for people and markets to function efficiently. Rather than assume that people act only rationally, or that they pursue only self-interest, socio-economics seeks to advance a more encompassing interdisciplinary understanding of economic behavior open to the assumption that individual choices are shaped not only by notions of rationality but also by emotions, social bonds, beliefs, expectations, and a sense of morality.

Socio-economics is both a positive and a normative science. It is dedicated to the empirical, reality testing approach to knowledge. It respects both inductive and deductive reasoning. But it also openly recognizes the policy relevance of teaching and research and seeks to be self-aware of its normative implications rather than maintaining the mantle of an exclusively positive science. Although it sees questions of value inextricably connected with individual and group economic choices, socio-economics does not entail a commitment to any one paradigm or ideological position, but is open to a range of thinking that treats economic behavior as involving the whole person and all facets of society within a continually evolving natural context.

Unique among interdisciplinary approaches, however, socio-economics recognizes the pervasive and powerful influence of the neoclassical paradigm on contemporary thought. Recognizing that people first adopt paradigms of thought and then perform their inductive, deductive, and empirical analyses, socio-economists seek to examine the assumptions of the neoclassical paradigm, develop a rigorous understanding of its limitations, improve upon its application, and develop alternative, perhaps complementary, approaches that are predictive, exemplary, and morally sound. With modest amendment, this description of socio-economics was the substance of the petition signed by more than one hundred twenty law professors from over fifty AALS member schools, to establish the AALS Section on Socio-Economics. It serves as the constitution of the Section.

### Socio-Economic References

1. Paul Stern, "The Socio-Economic Perspective and Its Institutional Prospects," *The Journal of Socio-Economics*, Volume 22, No. 1, 1993, pp. 1-11.
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