Gary Becker’s Influence on the Economic Approach to Law

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“A criminal, with the exception of a limited number of psychopaths, is assumed to reach to different stimuli in a predictable (rational) way. Instead of regarding criminal activity as irrational behavior associated with specific psychological and social status of an offender, criminality is analyzed as rational behavior under uncertainty.”

(Royal Academy Press Release Oct. 13, 1992)
“The approach taken here follows the economists’ usual analysis of choice and assumes that a person commit an offense if the expected utility to him exceeds the utility he could get by using his time and other resources at other activities. Some persons become “criminals,” therefore, not because their basic motivation differs from that of other persons, but because their benefits and costs differ.”

(Crime and Punishment: An Economic Approach)
“Sometimes it is possible to separate persons committing the same offense into groups that have different responses to punishments. For example, unpremeditated murderers or robbers are supposed to act impulsively and, therefore, to be relatively unresponsive to the size of punishments; likewise, the insane or the young are probably less affected than other offenders by future consequences and, therefore, probably less deterred by increases in the probability of conviction or in the punishment when convicted.”

(Crime and Punishment: An Economic Approach)
Influence of “Crime and Punishment”

1. Large Empirical Literature testing the deterrent effects of conviction rates and sanctions on behavior.

2. Theoretical Literature that extended and refined Becker’s model.

3. Most contributors to the literature are economists (or joint degrees) not law professors
Gary’s Impact on Law and Economics

1. The first is his influence on legal scholarship. I use citation analysis to provide a rough measure of Gary’s influence.

2. The second is more personal and I believe more important. This is Gary’s encouragement and support to persons like Dick Posner and myself who were applying economics analysis to law at a time when legal scholars often ridiculed the field.
Figure 1

Total Citations (articles and books) to Arrow, Becker, Coase, Samuelson & Stigler: 1960–2009
Figure 2

Citations in Law Journals: Gary Becker and the Average of Six Economists who have been Full Time Law School Professors since 1980
Figure 3

Gary Becker Citations in Law Journals: Articles & Books, Articles Only and Crime & Punishment Article
Figure 4

Gary Becker Citations to Crime & Punishment Article
The Law Professor’s View of the Economic Approach to Law in the 1970s and 1980s

“Economic analysis was either wrong or, if right, it was obvious.”

(conversation with Richard Posner)

“Economic analysis of law has peaked out as the latest fad in legal scholarship….and future legal historians will need to exercise their imagination to figure out why so many people could have taken most of this stuff so seriously.”