

Professor Shleifer's research interests are vast and diverse, as one can see from his ponderous scientific production, and include among others takeovers and the market for corporate control, acquisitions, corporate governance, corporate finance and capital markets, behavioral finance, economic growth and political economy, privatizations, securities and corporate law, and the economics of regulation.

Today I would like to focus on the interesting path of research Professor Shleifer has undertaken in recent years, that he calls "new comparative economics", whose clearest example is represented by a working paper titled "The New Comparative Economics" that he published in May 2003 with Gleaser, La Porta, Lopez-de-Silanes and Djankov.

New comparative economics places itself in the tradition of institutional economics, in that it studies the effects of institutions on economic efficiency, and in this sense it roots back to one of the great issues of modern economics, studied by classic authors like Oliver Williamson, Mancur Olson, Ronald Coase and even Karl Marx, the theorist of central planning. In this tradition, the original contribution of new comparative economics is to analyze the different institutions within one system rather than to compare different systems.

In the paper I mentioned before, the authors describe the central institutional problem of social control of business as the one of a tradeoff between controlling "disorder" and controlling "dictatorship". Institutional choices are described as lying on an ideal line (the "Institutional Possibility Frontier", or "IPF") representing all possible combinations of disorder and dictatorship: at one end we find disorder, where state intervention in the economy is negligible, market mechanisms

govern business relationships and the potential for losses due to private exploitation of market power is maximum. At the opposite end we find dictatorship, where state intervention in the economy comes to the point of public ownership of enterprises, disorder is minimum, but there is room for social losses coming from exploitation of power by the state.

Along this spectrum, an efficient institutional choice can employ four basic strategies – all of which are commonly used in the real world – that the authors describe as “private orderings”, “private litigation”, “regulation” and “state ownership”, implying an increasing power of the state over individuals as one proceeds from the first to the last. Under private orderings, the resolution of conflicts among individuals and the correction of abuses are ensured by market mechanisms and namely competition; state intervention is virtually null and individual choice is paramount. As we know from Coasian economics, however, transaction costs and externalities can cause market failures and therefore call for a shift on the IPF. The next step is private litigation. Under this regime, state intervention is limited to the creation of a judicial system which individuals can rely on to solve their disputes and defend their rights through the enforcement of contracts and tort laws. Another step forward on the line leads us to “regulation”, where the state is not represented by courts that administrate private litigation but by public authorities entitled to regulate economic activities, on the assumption that public regulators might have an advantage over judges in terms of expertise and commitment to the pursuit of social objectives in specific areas. Regulators might be captured, however, and at this stage the decrease in the costs of disorders is accompanied by a relevant increase in the costs of dictatorship. We come then to the fourth and last strategy, whose

opportunity is predicated in extreme cases where any other choice might jeopardize the social objectives of the state – the authors refer to the case of prisons. Under this strategy, the state owns economic activities instead of just regulating them; the pursuit of social objectives is therefore under complete control, but the virtues of the market are inevitably lost.

I think that the line of reasoning and the framework of analysis presented by this variation of institutional economics opens many interesting fields of research both for economists and for legal scholars. In fact, it is gratifying for a legal scholar like me to see that the problem of institutions and of regulation of economic activity draws so much attention by contemporaneous economists.

I just want to focus on a possible interpretation of this model that would take into consideration, besides the allocative effects, the distributive effects of the different institutional choices, in terms of the legal rights that individuals and social groups are entitled to enforce under each institutional strategy. Going back to the four basic strategies described by Professor Shleifer, this approach would observe them from the viewpoint of the different rights that can be enforced under each strategy, and would probably show that not only the nature of these rights, but also that of the social groups that may enforce them vary in each of the four strategies.

Turning to the “private orderings” model first, it is easy to see that under this strategy individuals cannot claim the enforcement of any legal right; conflicts are resolved by competition and the market selects the relevant preferences and discards irrelevant ones. Under the “private litigation

system”, on the other hand, potentially any individual can sue to claim the enforcement of her or his rights in front of a judge, who has limited discretion and is not guided by autonomous policy objectives other than the enforcement of private rights. One step forward, in a regulation regime, decision-making is entrusted to public regulators, that typically have a certain degree of discretion in the interpretation and in the application of the law. Probably it is the most flexible strategy, in which complex juridical texts govern the possibility to challenge the regulator’s decision (see the *Chevron* test in American law). Finally, under the state ownership system, given that there are no private property rights, individuals will enforce their political rights as citizens and through the constituencies to which they are a part.

In this scenario it is easy to observe that each strategy differs from the others both in terms of the legal claims that can be enforced, and in terms of the constituencies and social groups than can enforce them and are more likely to succeed. At a first glance, in the “private litigation” model potentially all citizens, without needing to organize in groups or lobbies, can access the judicial system and typically claim individual entitlements that can be enforced against other individuals and the state. Under regulation, and even more under public ownership, the situation seems quite different and we expect that the enforcement of one’s rights is somehow weakened and/or requires forms of organizations that not all individuals might be able to implement. Finally, in the “private orderings” system, the allocation of entitlements is entirely entrusted to market mechanisms and the degree of market power of each player is what determines the outcome.

It is just a collateral thought, as I am sure you understand; the point I want to make is that the approach of new comparative economics presented by Professor Shleifer is not only interesting in itself, but it opens the way for further thinking in economics and in law by offering a method of analysis that can bring to deeper understanding of crucial problems. For this contribution, other than for being here today, I want to thank Professor Shleifer personally and on behalf of all participants.

Thank you.