**Rights as Synthetic Molecular Indices: An Empirical Approach to Law and Economics**

[*Philosophical and Methodological Foundations of L&E*]

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**Abstract:**

Within the usual approach to law and economics, as advocated by Richard Posner and the Chicago School, rights are conceived in a conservative way. A right is essentially a claim or side-constraint modeled as an extension of the right to property. Moreover, a right is an entitlement that can be enforced through courts or equivalent institutions for promoting the social welfare. Rights – both as negative and positive liberties – provide incentives associated with enforcement, adjudication, and transaction costs; finally, rights are the subject of cost-benefit and wealth maximization analysis, aimed at determining the efficient allocation of economic assets.

In general, the received view in law and economics assumes that markets are more efficient than legal systems in allocating assets: sometimes, the legal system “over-propertize” rights – such as it happens with patents – or promotes inefficient distribution of goods (*e.g*., the tragedy of the commons or rent control measures). It turns out that this view, still prevalent today, is quite close to the classical libertarian and neoliberal normative theories of rights as espoused by Robert Nozick and Murray Rothbard, among others.

Is this the only way to conceptualize rights in law and economics? The answer to this question is probably negative. The Author of this essay proposes a novel, empirical approach to law and economics that conceptualizes rights as *synthetic molecular indices* (what we might call the “right- -as-Nasdaq approach”) that measure changes in subsets of legal positions across domains and over time.

Taking cues from both the performance models recently developed by institutional economists and the methods currently used by the World Bank, the OECD, and the IMF, the Author proposes a new theory of rights characterized by a radical empiricism that reduces rights to molecular aggregates of qualitative and quantitative performance indicators mapping outcomes, processes, and structures of rights.

Rights are thus conceptualized as second-order crude empirical instruments that can, in principle, be measured. Specifying the content of a right is done through evidence-based clustering techniques over the independent variables. This essay offers an example of how this approach works by breaking down Henri Lefebvre’s elusive right to the city into a set of performance and deprivation indicators that are scaled by RAG, and clustered based on a reconstruction of *opinion juris* as it emerges from the relevant literature.

The method of analysis used in this essay is desktop, conceptual, and normative, and the implications are primarily methodological. Specifically, the toy-model combines the molecular approach to rights (an evolution of Hohfeld’s account combined with specificationist strategies) with the performance framework that maps core indicators of economic efficiency, transparency, rule of law, procurement, and fiscal sustainability, as well as the governance system for rights protection. Accordingly, the structure of a right is divided into several levels and dimensions, which are visualized through matrices and organizational charts.

As a result, this research aims to help bridge the gap between legal theory and applied economics, by combining a realist, predictive, and, ultimately, empirical approach to rights – as advocated by Alf Ross and Theodor Geiger – with state-of-the-art methods for designing statistical performance indices *qua* rating and ranking tools. The indicators are aggregated in a molecular fashion and the underpinning legal relations are defined in terms of Hohfeldian correlations. The essay also includes a discussion of the main limitations of aggregation methods with an eye to the molecular structure of rights, as well as of the main difficulties in isolating and validating a subset of first-order indicators and indices for micro-rights and macro-rights.

The expected impact of this paper is to provide a new understanding of the notion of rights effectiveness and to develop a semi-articulated theory of rights that allows for the comparison of longitudinal, panel, and cross-sectional data. In addition, the essay will help debunk the traditional law and economics approach to rights, by creating new analytical tools for benchmarking and assessing the overall level of performance of states in protecting rights. The overarching goal of this paper is to shed light on the theoretical foundations of law and economics.

**Keywords:** law and economics – rights – performance indices – indicators – governance – W.N. Hohfeld.