

Economic Analysis of Law – A Collection of Applications

Die ökonomische Analyse des Rechts
– eine Sammlung von Anwendungsmöglichkeiten

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Innovatoren Marktzutritt verschaffen wollen. Die optimale Haftungsregel verliert damit ihre effizienzsichernde Wirkung.

Der Kommentar hebt anhand des Beispiels eines neuen Hochgeschwindigkeitszuges das Ausmaß der Kosten hervor, das der Innovator zu übernehmen bereit sein müßte und betont das schon bei FINSINGER selbst angemerkte Erfordernis, diese Kostentragung allenfalls über eine Steuer herbeizuführen.

Insgesamt wird der Arbeit eine über den Fall der Innovation hinausreichende Bedeutung attestiert.

COMMENT ON "LIABILITY AND THE INCENTIVES FOR INNOVATIONS" BY JÖRG FINSINGER

Steven SHAVELL

1. This is an interesting paper, which seems to me relevant in a general context, not just in the context of innovation.

2. The paper observes that when new technologies are introduced, individuals may want to take precautions to avoid harm. The development of a high speed train, for instance, may cause vibrations and lead individuals living near the tracks to reinforce their homes to reduce vibrations. For a company to be induced not to introduce a new technology unless the benefits exceed the social costs, the company must be made to bear the **full** social costs of the technology. Thus, the company must pay not only for the harm it does (such as harm caused by vibrations), but **also for the costs of precautions** that possible victims take to reduce or avoid harm (the costs of reinforcing homes). Under tort liability, the company will be unlikely to pay the full social costs. Even if, under strict liability, the company is liable for harm and for the costs of precautions, it will not be liable for the costs of precautions if there is no harm.

3. This point appears to apply whenever the level of activity of an injurer leads victims to spend money or effort on precautions. Whenever that is the case, for injurers' incentives to engage in their activity to be correct, they must pay for the full social cost of their activity (or be required to choose the correct level of their activity). One way of achieving this is through use of a tax scheme, where the tax is set equal to the cost of victims' precautions.