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ECONOMICS AND LAW: TOGETHER OR SEPARATELY?

The article views the issues of interaction between the theories of economics and law. The author pays attention to the necessity of studying the integral sciences, and highlights the theoretical grounds for the "economics-law" symbiosis, as well as for its influence on the social progress. The examined issues include the analysis of the economics and law dependence upon the political and economic situations, of the differences between economic and juridical laws, of the application of the marginal data for crime punishing and prevention, of the law system as the public capital, of the role of time lags in economics and law, and R. Coase's doctrine of proprietary rights.

The world civilization level and the necessity of the rapid recovery of the national economy from the global economic crisis demand the deep research in the sphere of integral sciences. The study of integral sciences, that is, cross-disciplinary study of political science, law, statistics, microeconomics, macroeconomics, etc, is the call of the times.

The interaction and interdetermination of economic and law theories is essential for the society. The historical development of the analysis of the economics and law symbiosis in the 1950-s resulted in t creation of a new scientific branch – economic theory of law [1, p. 60]. However, it was K. Marx who pointed out that "regularity and order are the necessary element of every means of production, as soon as it should acquire the social stability and independence from a mere chance or arbitrariness" [2, p. 356-357]. At present we conventionally distinguish economics of law and economic analysis of law, and economic theory of proprietary rights (Fig. 1).

Economics of law is a branch of neo-institutionalism studying the influence of the legal mechanism on the economic life of the society, on the legal business, as well as the economic mechanisms of the legal norms creation and application. The institutions are an assemblage of rules and norms created by people, which serve as limitations for economics agents, and as corresponding mechanisms of protection and control over their observance [3, p. 73]. The state plays here the role of a "bandmaster".

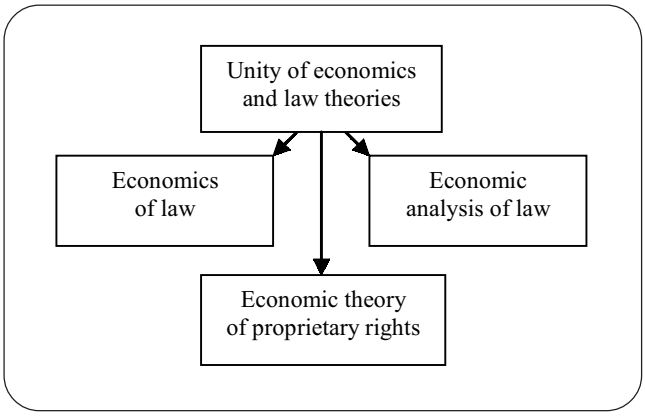

Fig. 1. Theories of interaction between economics and law

The scientific branch called "economic analysis of law" is based on the application of neo-classical branch of economic theory principles, that is, methodology of marginality and rationality of behaviour of the social-economic relations' participants. Here the state plays the role of "a football referee".

The economic theory of proprietary rights studies the optimal distribution of proprietary rights.

In historical aspect the legal relations were formed into the consistent conception earlier than the economic ones. The economic relations are reflected in legal and religious documents.

In general, law and economics can influence the public progress in three different directions:

1. They can promote it, in case they correctly enough express the logics of social development.

2. They can retard the pace of social develop-ment, in case of attempts to act against the objective laws.

3. The interaction of economics and law can be reflected in social development in a rather controversial way, promoting it in one direction and retarding in another.

Both economics and law possess certain independence and autonomy within the frameworks of state interests and interests of different strata. The elaboration of the bases of the most effective economic and legal policy, and their correction are the objectives of many countries. Law, like any other element of superstructure, can keep up with the changes brewing in economics, or lag behind them, and can bring regularity and order into economic life.

Economics and law, as well as their correlation, do not stay unchanged. During all its existence, law, on the one hand, is finally influenced by economy, retains unity with economics, and on the other hand, the overall political situation may lead to the growing relative isolation of law from economics, to acquisition of the growing independence of law and to the strengthening of its reverse influence on economy.

However, the possibilities of the legal influence on economy are sufficiently limited by the dynamics of social-economic transformations. The improvement of the legal bases of the state regulation of economy is one of the society's primary tasks. In particular, during the III assembly of the Republic of Tatarstan State Council 505 laws were passed, 223 of them are laws for economic policy regulation, 52 are for social sphere regulation, and 230 are on the relations in the sphere of the state system. That is, the laws regulating economy and social life constituted about 54% [4].

The low quality of many laws adopted by Federal Assembly and legislative bodies of the Federation subjects is explained, in particular, by the insufficiency of their economic sources and grounds.

The training of lawyers and economists has caused a lot of critics recently. However, there will never be redundancy in these professions. It is a call of time. We should agree with M. Marchenko: "The juridical boom was caused by the traditional for the Soviet period deficit of juridical personnel, the many-fold increased demand in such personnel for the economy and social sphere, which are being reformed in the market direction, as well as the broad opportunities for "entrepreneurship activities", including those in the educational sphere" [5, p. 2]. Each person should be educated in juridical and economic spheres.

In the Soviet project of social-economic transformations the economic basis determined the superstructure, hence the negligent attitude towards its elements, including the law theory. Economic knowledge could be moulded in legal form only after the transition of the economic system from the command-administrative to the market one. But at the first stages of the economic system transformation the ideas of "economic determinism" prevailed. The competition, inherent to the market, was supposed to lead to the prices reduction and filling-up of the market, to turning of economic relations into production boosters. It appeared, however, that without powerful and multilateral, and not just external, legal provision the reforms do not go on.

The institutional transformation became the basis of economic reforms, and it demands high expenditures. The institutions systems are a multilevel organization, and the interaction of various institutions influences the economy's stable development.

The economic activity regulation, that is the elaboration of rules of behaviour and interaction of the subjects of a market, of industrial, financial and foreign economic activities, is the basis of institutional-legal transformations. In particular, the anti-monopoly laws were passed at the very beginning of transformational processes. They contained distinct features of the institutions of planned (totalitarian) economy. Competitive behaviour does not appear by itself after the economy liberalization, it is ensured by the corresponding legislation and structures. But the main problem is that no legislation, good as it were, can hinder anti-competitive policy. The law can be evaded, relying on the well-grounded norms of informal and confidential agreements. The economic relations regulations are expressed in adopting different laws and bylaws (especially different codes: the civil, the taxation, the family code). But it should be noted that institutional transformations are the most expensive. Changing of laws and bylaws requires both time and material expenditures, that is why it is not surprising that a number of normative-legal documents of

1930-s is applied today[1]. At the same time we should mark the increase of the role of new laws in fiscal policy. In particular, in 2009 the state due for the privatized land by the law of "Summer house amnesty" brought more than 420 million roubles into the federal budget, and the charge for informational and other services – 25 million roubles.

The cooperation of the representatives of economic and legal sciences in reasonable frameworks becomes an essential condition of the progressive social development. But this cooperation also presupposes that the representatives of legal sciences possess some economic knowledge and can use it in their research activity. The economist A. Shastitko notes that "if we return to the issue of interaction of the economists and the lawyers, we should mark the difference in their approaches. There are lawyers, who work mainly in the sphere of state and law theory, conventionally speaking. There are practical lawyers, who work in the courts and know what and how takes place in the real life. When preparing the estimations of regulation impact, we worked with the latter ones, and this experience was successful. A well-known opinion of Coase is: if you want to understand how the economic system works, read juridical literature. Indeed, until there is a lawyer, who knows the mechanisms of law enforcement, the economists may not understand a lot in how certain mechanisms actually function" [6, p. 60].

In recent years the economic analysis became casual in the juridical theory and practice. It is easy to notice the natural kinship between these two matters: the objective of both is understating of social institutions.

Moreover, each of them possesses the distinct normative component: both the jurisprudence and economic theory are interested not only in the function of social institutions, but the ways to improve their activity.

The economic theory contains a lot of laws, among them the law of demand, the law of cost, the law of decreasing profitability, the law of decreasing utility, etc. [7, p. 313]. The economic laws are the stable, sufficient, repetitive, cause-effect interrelationships between people, forming in the process of production, distribution, exchange and consuming of good, production and services.

The juridical law is the norms and rules, depending on the decisions of the state authoritative bodies and concerning the behaviour of economy subjects of the territory of a certain country.

There are many juridical laws relating to each economic law. In particular, the efficient functioning of the demand law requires such juridical laws as "On competition", "On protection of consumers", "On advertisement", "On entrepreneurship activity", etc.

Economics is widely used for the research of the choice of illegal activity and elaboration of a structure of crime preventing stimuli.

The motives for many crimes are of social-economic character. Even the minor faults, like wrongful parking, are connected with economic reasons: a driver commonly compares the advantages of convenient location with the expenditures for buying a parking ticket. Such alternatives are of utterly economic nature, that is why the construction and analysis of economic models can help to penetrate into the essence of crime and punishment. Special attention in the research literature is paid to the economic study of corruption. Within the economic approach corruption is viewed as a form of economic behaviour, the aim of which is maximization of utility, the means is extracting non-productive income from manipulation of resources which at officials' command due to their official authority. Within economic approach the behaviour of a bribegiver and a bribetaker is interpreted as a rational estimation of profits and losses.

The individual's rationality has universal significance. It means that everybody is guided in their activity by economic principle first of all: they compare the marginal profits and costs (and, first of all, profits and costs connected with decision making), trying to fulfill the condition:

$$MB > MC,$$

[1] P.V. Krasheninnikov noted: "…at federal level only there existed several thousand law, bylaws and various regulations, which functioned from as early as 1930-s. It is hard to believe, but until March 1, 2005 some acts, signed by Yezhov, Beria, etc., functioned. Adoption of the Housing Code led to disaffirmation of thousands of acts and to the regulation of housing relations". See: URL: http://www.consultant.ru/law/interview/krasheninnikov.html

where *MB* is *marginal benefits*, *MC* is *marginal costs*[2].

Let us view, for example, the cases of mobile telephones theft/robbery. The thief's profit is determined by the utility of the objects taken, while the costs include the possibility of the arrest and fine and/or imprisonment connected with it. We can present the thief's choice in the following equation:

> Thief's benefits from the theft = the profit from the object taken – expected expenditures

The expenditures connected with theft of objects include the cost of the objects taken and the cost of the locks, warning systems, guarding service, etc, used for protection against theft.

A criminal takes a risk of executing such a crime which equals the marginal profits with the marginal costs. A criminal will choose the level maximizing his net profit, or will prefer not to commit a crime at all.

When viewing crime multiplicity [8] the analysis of marginal profits and costs becomes impossible.

The expected costs and their forms and sizes, imposed on the thief, are determined by the justice system and the environment, including the thief's moral self-assessment.

At individual level a fine is of low significance. Not all criminals are detained, so the fine is amerced with some probability. This probability is determined, in its turn, by the resources directed for the crime clearance.

The state is aimed at minimization of the net costs of criminal activity and chooses the level of compulsion for law observance and the fine size, basing on the fact that this choice makes an effect on the scale of the crime distribution.

In general, the larger the extent of compulsion for law observance and the fine size, the larger the marginal costs for the criminal, which leads to the reduction of criminality level.

The increase in the extent of compulsion for law observance is expensive for the state, while the fine size increase does not lead to extra costs. Indeed, the fine increase is profitable for the state, as the fines can be spent on coverage of the costs connected with compulsion and detentions. Hence, the state should set the lowest of all possible values, which gives the positive probability of detention.

A criminal is concerned only with the expected costs of detention. As the increase in the extent of compulsion for law observance is expensive for the state and only the increase in fine size is profitable to it, the state will tend to imposing large fines with low probability of compulsion. As an old English saying has it, one can be hanged for a sheep as for a lamb.

Special position in economy and law relations is given to time lags. This term means "procrastination". A lag is a time interval between the impact of some event and its effect. Lags significantly influence the economic activity. Their ignoring may lead to dramatic economic disproportions. Knowing the rules of lag processes makes it possible to choose the correct decision, to predict and program economic processes at the level of an enterprise, branches, regions, and the whole country.

Time lags have certain stages. For example, the first procrastination takes place right after revealing the Bexisting obstacles in economic activity. The governmental bodies begin to realize the necessity to act, and the decision to correct the economic policy is taken after long debates. The lawyers formulate a new law or amendment to existing acts. The law undergoes several readings in elected bodies, is being passed by the deputies, then it is passed over to the head of the state, who may sign the law after analyzing it, or return it to a new round. One of the most important motives for returning is the lack of financial resources for its application, which testifies to the declarative character of the norms stated in it. At this stage the internal lag is finished – that is, the period between the instant of economic shock and taking the retaliatory measures of economic policy. Then the external lag starts to act – that is, the period between the instant of taking the retaliatory measures of economic policy and the time when they give results. At that time the economy should be reconstructed according to the adopted law.

Various governmental measures correspond to long and short lags. For example, the laws aimed at health and life protection have short lags. If the government

[1] See H.R. Varian's works.

"gives the green light" to investments, the enterprises will turn to commercial banks (procrastination when putting into action). Only after that the borrowed current assets will lead to additional working places and production. The processes of financial recovery of enterprises by their restructurization during bankruptcy procedures also have long time lags.

Long internal lags are characteristic for the budget-taxation policy. The process of law-passing in this sphere is, as a rule, slow and bulky.

One of the most important economics and law issues is the problem of optimal distribution of property rights. This branch is often called property rights economics, though actually "law economics" is much broader than "property rights economics".

The founder and leader of property rights economics is an American economist Ronald Coase. In his famous article "The Problem of Social Cost" [9, p. 87-141] he turned to the long-standing problem of negative outer effects – the effects which harm persons who have no relation to the harmful industry. R. Coase was the first to pay attention to the "friction effect" of the market – with the transactional costs, that is, the costs of property rights transition agreement.

The more complicated the economic system, the larger transactional costs. Hence an important consequence: the main objective of the law is specification of property rights, that is, the clear and distinct determination of the boundaries of economic subjects' rights and their protection. The law system is to reduce the transactional costs, thus creating conditions for the most efficient (from the point of view of public benefit) distribution of rare resources in the course of voluntary agreements. The object of property relations in this case is not only such exotic rights as the right to pollute the environment, but also, for example, rights for radio-waves (for radio stations), patented intellectual property (inventions) and other immaterial objects.

The legal system is a kind of public capital. The characteristics of law as a capital benefit got its multilateral substantiation in the work "Boundaries of freedom" by Buchanan [10]. "The law systems, where formalized in practice or not, – wrote Buchanan, – are a public capital, the efficiency of which increases with time".

The approach to the law system not just as to the public benefit, but as to the public capital is undoubtedly the economists' merit. Unlike ordinary capital, the efficiency of which can be obtained immediately, the benefits of a reliable law system, which determine the growth of interpersonal relationships stability, are not obvious at once. Moreover, the gradual loosening of the law system, "blurring" of legal bases may lead to the situation when the public capital is lost for ever.

The world economic crisis of 2010-s imposes new requirements for revealing the interconnections between economics and law. At the meeting of the round table on the theme "The Russian Federation legal system under the conditions of globalization" it was stated that "the legal systems of different countries should to some extent correlate with each other, cooperate with each other; without that neither communication between people nor economic links are possible" [11]. In connection with that the problem of liberalization and unification of economic and normative-legal relations comes into existence.

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