

Alpatov A.A.

## METHODOLOGICAL ASPECTS OF CORRELATION BETWEEN LAW AND ECONOMY

**Abstract:** *The article analyzes a wide range of views with regard to correlation between law and economy. To investigate this problem more thoroughly, an effort has been taken to consider it from various viewpoints, particularly, in the light of historical, economic and legal analysis. When the key problems of correlation are addressed in numerous perspectives, the most sensitive spot appears to be the corporate property. Hence, the author suggests his version of the concept of correlation between economy and law and hopes that it will help to improve the situation in the basic element of economy, to make the reform of legal and economic systems more balanced and efficient, and to identify the missing conditions that are required for steady (non-crisis) development of market economy. The author expresses his gratitude to the Russian Humanitarian Research Foundation (project No. 13-03-00482) which supported this research work. The present difficulties in the process of the Russian market economy formation resulted in the growing interest to the issues of its correlation with law. Moreover, the recent economic recession, experienced in many countries, requires reconsideration of the operational problems not only of the Russian economic system. It is thought that the search for the optimal and suitable solutions for the market failure should be performed with the use of various methods. It is believed that the research of the correlation between law and economy conducted in three dimensions (historical, economical and legal) in parallel with the anthropological, phenomenological and synergetic methodological support will enable to elaborate the most valid ideas and conclusions on the subject of the research. A rather complex structure of the interrelation of economy and law is caused by the major determinants of both categories. The objective laws play a fundamental role in the economy, while the law features the common will of citizens expressed by the state as a basic component. The best way to represent the character of their interaction is through the hierarchy of essences. In our opinion, the economy is the essence of law, but the essence of economy is the equilibrium, or (which is the same) justice. In other words, the essence of economy, meaning the essence of the second-order law, is the balance of equality and freedom, which can be represented as an overlap of two equilibria that are simultaneously established in the market, namely the equivalent and free exchange between entities (1), and the balance of property rights directly in a corporation (2).*

**Keywords:** *Law, economics, correlation, exchange, labour, property, planned economy, market economy, overall equilibrium, objective laws.*

The present difficulties in the process of the Russian market economy formation resulted in the growing interest to the issues of its correlation with law. Moreover, the recent economic recession, experienced in many countries, requires reconsideration of the operational problems not only of the Russian economic system. It is thought that the search for the optimal and suitable solutions for the market failure should be performed with the use of various methods. It is believed that the research of the correlation between law and economy conducted in three dimensions (historical, economical and legal) in parallel with the anthropological, phenomenological and synergetic methodological support will enable to elaborate the most valid ideas and conclusions on the subject of the research.

Historical approach helps to see the most essential aspect (that is mainline development) in the many-sided correlation between economy and law alongside with the key factors and categories of social development. The course of the human history viewed as transition from appropriation to production was marked by a revolution that changed life of people and brought them to a brand new social development line. Labour turns into the basis of the human existence in the new economic conditions. On the one hand, division of labour and specialization increase productivity of the economic resources, on the other hand, they bring about the necessity of exchange of the labour products. Labour acquires the characteristics of the constitutive element in the economic life creating the conditions of existence. At

the same time active and targeted economic activities are impossible without owning (appropriation) of the products of labour by certain individuals, which brings about the notion of property as an essential part of these activities. The process of evolution of an individual and his social status goes along with the complexities in the development of the proprietary relations. It will take many centuries and social convulsions to make the access to property formally equal.

Going back to the times when the humankind only started developing state institutions, we see that the first written laws were elaborated with the purpose of consolidation and protection of the evolving order of production, division and appropriation of the social product. Division of the material benefits has always been a stumbling block, and the history has a lot of evidence how dissatisfaction in this sphere provoked social conflicts. As creation and appropriation of material benefits are impossible without labour efforts and proprietary law, the production-based economy considers these two factors (categories) as the most important ones in the system of public relations.

Labour and property are characterized of economic and legal significance, which is shown in its importance only in the commodity-money exchange process, that is when the products of labour are exchanged by their owners. The idea of exchange in the social relations is based on the principle of equivalence of interactions and equality of producers. In the process of exchange an individual turns into a legal entity, while a natural product acquires characteristics of item of goods with its mysterious property of cost<sup>1</sup>.

This vividly illustrates a well-known postulate of an ancient Greek philosopher according to which man is the measure of all things. However, this principle is not brought to life in the commodity-money exchange process, but rooted much deeper. The first outlines of the principle can be traced in the ancient bloody traditions of *lex talionis* (eye for eye, tooth for tooth). The procedures of physical punishment, deprivation of life, prescription of fines in the name of state, have a common root with *lex talionis* – retaliation corresponding in its gravity with the act of crime. The latter is especially important as the punitive sanction of the developing state institutions being a kind of an equivalent compensating for the violation of interest of the affected party.

A new tendency consisting in economic and legal formation of an independent producer and separate market space came to the forefront in the Middle Ages. Evolving of patrimonial cities with developed commod-

ity-money exchange goes in parallel with the formation of the urban law, attaching the freedom of producer and substantiating single economic space (collection of Lombard laws (17<sup>th</sup> century), the *Coutumes of Normandy* (13<sup>th</sup> century), the *Coutumes of Beauvaisis* (13<sup>th</sup> century), the *Sachsenspiegel* (13<sup>th</sup> century), the *Schwäbenspiegel* (13<sup>th</sup> century) etc.)

Previously elaborated formulas of the Roman law played a significant part in the development of the commodity exchange. Reception of the Roman law in the Middle Ages is explained not only by elegance of the latter, but in the first place by the necessity of the basics for the civil economic turnover, such as equality of the depersonalized parties, freedom of contracting, autonomy, individualization of property liability, inviolability of private property. Application of these market principles for every individual despite his social background and welfare became possible thanks to the revival of the ideas of the legal doctrine and consolidation of the latter during the period of the bourgeois revolutions in the legal documents, most famous of which is the French Declaration of the Rights of Man and of the Citizen of 1789.

Creation of the conditions for free transfer (exchange) of goods and services in separate states required a complicated process for formation of a single market economic space. One of the main reasons of the mentioned tendency is division of labour, which in its turn rests on equivalence (balance) of social interactions taken as an objective regularity. Law is needed to ensure equivalence of market exchange as well as protection of the ownership rights of the producers for the results of their economic activity by means of corresponding regulations. Consequently, separate states (macro level) gradually develop such aspects of correlation between economy and law as market space, free exchange, formal equality of economy agents, competition. Labour and property turn to the major development impulses on the scale of a single household (micro level).

Legal and economic status of a person is changing alongside with the transformation of the two key categories of the correlation. Inequality of statuses of individuals known from the very beginning of state formation is gradually developing into formal equality. That is why, according to the reasonable remark of L.D. Voyevodin, individual's position in society and state on the whole are characterized by his economic and legal statuses, the latter depending on the labour and proprietary regulations<sup>2</sup>. The correlation of the analysed categories includes complex and contradictory

<sup>1</sup> See: Pashukanis E.B. Selected works on the general theory of law and state. – M., 1980. P.61, 109.

<sup>2</sup> See: Voyevodin L.D. Legal status of a person in Russia. M., 1997. S. 204.

process, in which the idea that only “labour gives birth to the private possession”<sup>3</sup> and is the real source of public welfare is gaining popularity.

Nevertheless, history demonstrated that capitalist market was not as perfect as it had been considered. It has its failures and defects. The most painful and devastating consequences are those of the overproduction crises, experienced by capitalist countries on a periodic basis. In the beginning of the 20<sup>th</sup> century the Soviet Russia embodied the ideas on socialist society grounding on planned economy. Further these ideas spread in other socialist countries. However, the concrete embodiment of the command economy as an alternative to the market one vividly indicated that a social organism loses from disregard of the market principles and private property. At the end of the last century many Russian and foreign legislators and economists tried to present a general overview of the basic concepts in the correlation of law and economy in the soviet system<sup>4</sup>.

Social command economy is grounded on completely state-owned property and means of production, strict regulation of economic relations between individuals and organizations from the side of the state apparatus. Official exploitation of an individual by another individual is eliminated, but in fact the socialist economic reality was associated with exploitation of an individual by state. Excessive centralization of management functions and concentration of power in the increased state bureaucratic apparatus turned state officials into owners of all means and resources of production *de facto*. General state planning and distribution legally excluded economic freedom of citizens and households. Liquidation of independence, lack of motivation in the economic activities and indistinct demarcation points for the economic results lead to the production of goods, for which no demand existed, freezing of capital investments and reluctance in the sphere of new technologies introduction. Social security of citizens produced a vision of general welfare, equality and justice, but in reality the surplus product was distributed for the benefit of state officials.

Command economy ignored objective economic laws and was associated with excessive interference of state into the economic relations, which eventually resulted in economic disbalance. The retrospective historic analysis shows that instead of promoting balance in the relations

of economic agents and protecting equivalence the legal policy of the socialist state banned market relations and private property and thus undermined economic system. As a result social development significantly slowed down and acquired threatening prospects.

At the same time comparison of socialist and capitalist economic systems brings us to the so-called «vicious circle». On the one hand, market experiences crises; on the other hand, complete disregard of market laws results in even more serious social consequences. However, economic relations in the modern developed countries are based on the market, as this model corresponds to the more perfect and natural social structure. State regulation of production and distribution spheres in the market economy is minimized. This provides space for personal initiative, promotes creativity and interest of citizens in the results of economic activities, and enables them to realize their responsibility for the decisions taken. Autonomy of producers from state and personal responsibility for the economic results makes individuals work harder and on their own account.

Market competition functions as an inner impulse for activation of economic relations, thus avoiding control and pressure from the side of state. When every single economic agent makes maximum effort for ensuring his welfare, the general welfare of the society respectively increases. This approach enables to avoid state constraint, excessive concentration of resources and power in bureaucratic apparatus, which bears a serious danger for social progress. Thus, the correlation between free market economy and law can be expressed in the formula: law is focused only on protection of relations between economic agents, excluding interference into their internal affairs except for certain bans on abuse of rights, monopolies, and violation of other economic agents' rights.

At the same time despite the success of the market states they did not manage to solve all the problems and provide for stable development of the economic systems, which is shown in periodically bursting out economic crises. Thus we are approaching to a rather contradictory, but well-known term as *mixed economy*<sup>5</sup>. The term does not reflect actual state of things, which is also one of the conclusions of the S.N. Revina's PhD thesis<sup>6</sup>.

<sup>3</sup> Fabricius F. Human rights and European policy. M., 1995. P.37-38.

<sup>4</sup> See, eg.: Gaidar E. Economic reform and hierarchical structures. M., 1990, Kornash J. Deficit. M., 1990, Kudrow V.M. Soviet economic model: the heavy inheritance // Obshhestvennye nauki i sovremenost'. 1999. № 3.

<sup>5</sup> See: Orekhova T.R. Value for Law and Economics (General theoretical aspects): Dis. ... Candidate-ta jurid. Sciences. Moscow, 1999. 164 c.; Kul'kov V.M. Mixed economy (theoretical and methodological aspects) // Vestnik MGU. Series 6. Economy. 1996. № 5.

<sup>6</sup> See: Revina S.N. Theoretical problems of legal regulation of market relations in modern Russia // Abstract dis. ... Dr. jurid. Sciences. Nizhny Novgorod, 2008. C. 11.

In my view, economic systems of different countries and regions are characterized not by different models of mixed economy with specific «national ratio of mixing», but by different methods of compensation for disbalances in market economy. Current social systems of Sweden, Japan and the USA can serve as an example. The focus of the Swedish system is social policy, grounding on high taxes (more than 50% of gross domestic product). Japanese system is marked by planning and coordination of government and private sector activities, while planning is performed in the form of recommendation. American model of social system presents such correlation between law and economy, which allows law regulation of economic relations only in exceptional cases – adoption of the rules for economic relations, supervision over business and education. The German model is a model of social market economy, in which competitiveness is closely connected with creation of a specific social infrastructure, compensating for the shortage of market and capital, and with formation of a multi-layer structure of social policy institutions.

It is thought that after a series of crises the governments are forced to take special regulatory measures including interference in economy in the fear of recessions. The states apply different regulatory measures. Unfortunately, all existing measures cannot eliminate the problem completely, as even the most developed world's economies are disbalanced in the main constitutive element – corporations. If at macro level modern states have elaborated a series of effective measures for ensuring balance of exchange operations and fair competition, at micro level the problem of providing equivalent relations in the system labour-property is still unsolved. In my view only the measures designed for ensuring the balance between labour and proprietary right for the results thereof, combined with reliable state protection will enable to support stability of the whole economic system.

This configuration of economic relations will make the distribution of benefits look fair for the society. That in turn will provide an additional impulse for minimizing of state interference, which will give positive effects in the growth of national economy effectiveness. When the system of proprietary rights is viewed as optimal by a society, the efforts of individuals and the society on the whole will be aimed at observance and protection of human rights. There hardly exists a more reliable guarantee for social stability than support of the economic policy by all members of the society.

Investigating the problem of correlation of law and economics in the economic aspect, one may determine that the efforts to understand their interrelation had been already taken by Adam Smith who considered the law to be a tool

promoting the public benefit. This problem was elaborated by D. Hume, T. Hobbes, J. Bentham, Historical School representatives (W. Sombart, G. Schmoller, M. Weber)<sup>7</sup>, founders of the U.S. institutionalism (T. Veblen, J. Commons), the Marxists and many other scientists.

In my opinion, taking all investigators of economic field conditionally and in a very general view, they may be divided into two groups – market supporters and market opponents. It would be perfect if the identity of views was established among the market supporters, but, in fact, a lot of trends and schools emerged within this group. However, it makes sense to simplify the scheme to a certain degree and, as a rough approximation, to highlight two branches going from one root (classical political economy). The members of the first group supported the concepts of “free market economy” and perfect competition. F. Hayek, M. Friedman, J. Hicks and others felt reliance in the invisible hand of the market which was able, in their view, to meet any challenge; that is why the state was to execute only “night watch” functions. They were convinced that it was these economic activity arrangement principles that satisfied the human nature to the maximum degree.

Thus, F. Hayek held to the opinion that the only possible and reasonable way of social development was the one associated with the incentives of personal freedom, but limiting the role of the state to a minimum. He claimed that personal and political liberties cannot exist without economic freedom. Planning and competition can be combined only when the former facilitates the latter without working against it. The market system needs a law mechanism which is sensibly built and continuously enhanced. The legal system is mainly aimed at protecting and developing the competition. In addition, there are some areas where no law regulations can provide conditions for functioning of private property and competition. The best way to provide for their functioning in these areas is to rely upon the ability of people to spontaneously generate the rules of conduct and legal regulations. No state is able to substitute their free choice in this regard<sup>8</sup>.

Under the impression of the market collapses occurred in the early 20<sup>th</sup> century, the representatives of the second group had to agree with the necessity of state intervention into the economy. A significant contribution in the theory of “regulated capitalism” was made by J. Keynes and R. Harrod. These scientists advocated boosting of effective

<sup>7</sup> See: *Mackaay E.* History of Law and Economics // Encyclopedia of Law and Economics / B. Bouckaert, G. De Geest (eds.). Cheltenham, UK, 2000. P. 65-117.

<sup>8</sup> See: *Hayek F.* The Road to Serfdom. M., 1992. Pp. 18-65.

demand by means of the government expenditures for the economic purposes and through the state investments in the spheres of transportation, housing and utility construction. However, it would be incorrect to state that this position meant recession of market relations or their closure. On the contrary, the suggested ideas were intended to strengthen the market relations. Thus, J. Keynes wrote: “Whilst, therefore, the enlargement of the functions of government, involved in the task of adjusting to one another the propensity to consume and the inducement to invest would seem to a nineteenth-century publicist or to a contemporary American financier to be a terrific encroachment on individualism, I defend it, on the contrary, both as the only practicable means of avoiding the destruction of existing economic forms in their entirety and as the condition of the successful functioning of individual initiative”<sup>9</sup>.

From our point of view, the efforts to balance the economic system by means of state control are taken, in this case, for quite objective reasons and as a response to the challenges of the time. At the same time, the elementary cell of economy (corporation), the failure of which will influence the entire economic system, still remains beyond the scope of analysis. However, it is an imbalance at the level of elementary economic unit that produces a certain synergistic effect and de-stabilizes the entire economic system.

Conditionally, the second group may include the supporters of institutionalism as well (T. Veblen, J. Commons, J. Galbraith)<sup>10</sup>. Their views are mainly concurrent with the suggestions made by the theorists of regulated capitalism with some alterations introduced in the principles and methods of control. Their practical recommendations tend to the “social control” over the market economy, rather than the one provided by the state, with a particular emphasis made on bargaining<sup>11</sup>.

These scientists assign a crucial role to the legal part and highlight the superiority of law over economy. For example, J. Commons laid a special emphasis in his researches on the law factors and reproached the Classics and Marginalists for their lack of analysis of legal regulations. He believed that the emerging economic contradictions could be rectified with the help of – firstly – the state legislative activity; – secondly – the bargain meaning any legal agreement; and – thirdly – the independent system of justice which would

pass judgments in the particular cases, thus exercising control over the economic system.

J. Commons paid careful attention to the existing collective institutions driving the conduct of individuals. Their core is constituted by corporations, trade unions and political parties that act as “pressure groups”. J. Commons urged to accept the trade unionism as a legal and integral structural component of any mature industrial society<sup>12</sup>. In his books titled *Industrial Goodwill* (1919) and *Industrial Government* (1923), he explored the idea of social agreement between employees and employers using “give-and-take” processes. The new stage of industrial development associated with the growth of big corporations “has diffused capitalism throughout large masses of people”<sup>13</sup>.

Along with the collective actions, another important category of the J. Commons’ institutional theory was the concept of bargain (transaction). Its nature appears from the Neo-classical concept of rarity of resources since the conflict of their utilization is settled through the consummation of transactions. If this basic society institution did not exist, the conflict of interests would degenerate into the general violence of people against each other which would lead to an enormous economic and social damage. However, it is important not to mistake a transaction for a “simple” exchange of resources, goods or services. According to the definition given by J. Commons, “transactions are, not the “exchange of commodities,” but the alienation and acquisition, between individuals, of the rights of property and liberty created by society”<sup>14</sup>.

The transactional process serves to determine the “reasonable value” emerging from the consent to fulfill the terms of contract in future which is mostly aimed at achieving “security of expectations”. Building his theoretical system, J. Commons hoped that the “theoretical practices” contributing to enhance the institutions themselves would be formed progressively in the course of collective actions of capitalists and workers. He thought it to be the most important way to sustain the social equilibrium<sup>15</sup>. Such ideas were fixed in the Labour Relations Act of 1935 (or Wagner Act which was one of the most critical documents of Roosevelt’s New Deal) that secured the right to conclude a collective agreement to the employees.

In summary, J. Commons emphasized the significance of collective actions in market economy and expansion of the

<sup>9</sup> Keynes J. General Theory of Employment, Interest and Money. M., 1978. P. 455.

<sup>10</sup> Institutionalism (from Lat. Institutum – setting device, institution) suggests a systematic analysis of the processes and phenomena called institutions.

<sup>11</sup> See: Veblen T. Theory of the Leisure Class. Moscow, 1984; Commons J.R. Institutional Economics. N. Y., 1934.

<sup>12</sup> Ibid. P. 634.

<sup>13</sup> Ibid. P. 272.

<sup>14</sup> Commons J. Institutional Economics // American Economic Review. 1931. Vol. 21. P. 652.

<sup>15</sup> See: Commons J.R. Myself. N. Y., 1934. P. 87.

transactional theory into this process, and paid regard to the “reasonable value” and spontaneous generation of the “reasonable practices” in the course of collective negotiations. In this case, the vector of research appeared to be aimed at the epicenter of interrelations at the micro-level which means that the analysts admitted the importance attributed to the elementary cell of economy being a corporation. It turns out that the institutional thought has gradually changed its focus from analysis of market in general to investigation of the problems of interrelations in a certain economic entities.

However, searching for adequate solution of a problem can scarcely ever go directly and smoothly; it is more often full of mysterious zigzags as some adjustments are made by time and social practice. For example, *The Modern Corporation and Private Property* by A. Berle and G. Means published in 1932 explored the structure of rights in a corporation, apparently following the above mentioned trend; but the centre of gravity was somewhat shifted from the collective interactions between capitalists and workers to the relations between proprietors and managers. Having reviewed numerous statistical data, the researchers thoroughly proved the conclusion shaped in the last book by T. Veblen that the property went out of the control of big incorporated companies. The majority of proprietors turned into passive investors while the real control over enterprises was transferred to managers who can manage the corporations in their own ends.

It may be that this is not the only correct idea for all situations; actually, the real life is more complicated, but the emphasis on investigation of the problems associated with the proprietary right as a key category of interaction of economy and law has a solid foundation. Therefore, it is fair enough that the proprietary right became an impulse for establishing the entire school named economic analysis of law (economy of law). The economy of law is based on the belief that the main paradigm of economic science is the theory of choice. In terms of this reasoning, each individual is considered as a basic element of analysis and appears to be an egoist seeking for the maximum benefit. The use of resources with any purpose inevitably result in losses and search for options. Anyway, the nature of market relations is mostly revealed by the concept of equilibrium<sup>16</sup>.

D. Friedman wrote: “The economic analysis of law involves three distinct but related enterprises. The first is the use of economics to predict the effects of legal rules. The second is the use of economics to determine what legal rules are economically efficient, in order to recommend what the

legal rules ought to be. The third is the use of economics to predict what the legal rules will be. Of these, the first is primarily an application of price theory, the second of welfare economics, and the third of public choice”<sup>17</sup>.

A. Balsevich suggested that the economy of law has developed in three stages throughout the history – positivism, doctrinalism (from the 18<sup>th</sup> to the 20<sup>th</sup> century), legal realism (from 1920 to 1970), and the school of critical legal studies (from 1970 to the present day). There are three major approaches to the theory of economy of law – Chicago school, Austrian school and institutionalism. The Chicago school retains leadership among the schools specified above based on the theory of rational choice. Suffering the continuous criticism, its representatives hope for the fact that no other approach can be so successful<sup>18</sup>.

The central position in the economic analysis of right is held by the theory of proprietary rights which is aimed at a deeper investigation of the problems of economic organizations and “transactional economy”. The theory of proprietary rights was first suggested by two famous American economists – R. Coase and A. Alchian. The scientists who took an active part in its further development include Y. Barzel, L. de Alessi, H. Demsetz, M. Jensen, G. Calabresi, W. Meckling, D. North, R. Pozner, S. Pejovich, O. Williamson, E. Fama, E. Furuboth, S. Chueng. A lot of researches dedicated to the problems of economy of right were conducted in Russia as well<sup>19</sup>.

R. Coase showed that the distribution of proprietary rights played an important role in the world of positive transaction expenses in relation to the efficiency of resource allocation<sup>20</sup>. After the results of Coase’s researches were disclosed, the economists started to learn how to be more careful in social costs analysis. A clear vision spread that the effects of social costs were interrelated. Moreover, many problems linked with the social costs appeared exactly through the vague definition of proprietary rights for many essential resources. He believed that the perfect market competition was able to effectively control the extent of damage provided that the proprietary rights

<sup>16</sup> See: *Burrows P., Veljanovski C.G.* Introduction: The Economic Approach to Law // *The Legacy of Ronald Coase in Economic Analysis*. 1981. Section 1.1. The economic approach to law. Vol. II. P. 344–355.

<sup>17</sup> See: *The New Palgrave: A Dictionary of Economic Theory and Doctrine* / Ed. by John Eatwell, Murray Milgate and Peter Newman. Macmillan, 1987. Vol. 3. P. 144.

<sup>18</sup> See also: *Balsevich A.* Economics Law: problems of development and history // *Problems of Economics*. 2008. Number 12. Pp. 60-71.

<sup>19</sup> See: *Kapelyushnikov R.I.* Economic theory of property rights. M., 1990.; *Law and economics: the traditional view and prospects*. M.: HSE, 1999; *Deakin S.* Modern movement law and economics: analysis and evaluation // *Origins: issues and economic history of economic thought*. MY. 4. / Y.A. Kuzminov (ed.). M. et al: HSE, 2000. P. 178-227.

<sup>20</sup> *Mackaay E.* History of Law and Economics // *Encyclopedia of Law and Economics*. P. 75.

had been clearly determined and that the transaction costs tended toward zero<sup>21</sup>.

Turning to the analysis of an old problem of negative external effects (for example, the smoke going up the factory's chimneys which is harmful for people living close to it and not being customers of the products made at this factory), R. Coase was first to point at the mutual nature of this problem. As a Neo-classical economist, he suggested to solve the problem of external effects without direct state intervention. He insisted that the result of private voluntary agreements between the factory and population would objectively match the "public benefit" meaning that the option which maximized the social welfare in general would be chosen<sup>22</sup>.

Consequently, the economic theory of law allows us to draw some vital overall conclusions with regard to the correlation between law and economy. The legal system is designed to ensure the most efficient (in terms of social benefit) distribution of rare resources in the course of voluntary agreements. For this purpose, as R. Posner underlined, the legal rules should imitate the perfect market; they should distribute the proprietary rights in a way that would have been used by the market without externalities<sup>23</sup>. Hence, the main task of the law is to specify the proprietary rights, which means to fix – clearly and transparently – the limits of legal authorities exercised by economic entities and to protect these limits.

The economic theory of law set forth the convincing arguments with regard to the contradictory function of the state in a modern market economy. The economists anticipate that the government is unlikely to act as a social agency which is solely and mainly aimed at maximizing the social welfare. The researches conducted by the theorists of public choice (J. Buchanan, G. Tullock and others) showed that the politicians, in fact, maximized their own goals, just complying with the limits associated with periodical elections. Therefore, the losses suffered through the state intervention would often exceed its benefits. In addition, without having a better knowledge than individuals, the government will strive, nevertheless, to interfere in the economic life (including by lobbying) without reference to

the main criterion of effectiveness which is the maximization of public benefit. The arbitrary rule will continue as long as the voters tolerate it<sup>24</sup>.

Nevertheless, taking into account the aforesaid, and assuming that the state property is less effective than the private one since the state sector turns out to be a sort of "economy of bureaucracy", an interesting paradox will emerge – to develop effectively, a private-ownership system needs a strong state which is able to provide a decisive specification and reliable protection of proprietary right.

At the same time, this direction of economic thought contains some points which seem to us plainly confusing. Firstly, the supporters of the economy of law believe that the higher the transaction costs, the more complicated the economic system is. However, as they personally note, the more complicated the system, the higher its performance can be; and respectively, the ratio of costs will have a tendency toward decrease. Secondly, the settlement of a firm is viewed as a way to minimize the transaction costs as the employees of the firm communicate according to the principles of administrative subordination, rather than as independent and equal members of the market.

In relation to the other economic agents, meaning the external ones, when signing any contracts, the firm functions as an integral unit, or an independent legal entity. This conclusion drove the representatives of the economic theory of law to concentrate mainly on the proprietary rights in the outer circumference of the corporation. However, the logical progress of our analysis distinctly reveals that the core problem of proprietary rights resides inside the firm. It appears that many general conclusions of the theory of transaction economy, especially with regard to specification of the proprietary rights of economic agents, may be used to search for the balance of proprietary rights or power authorities for a certain resource exactly inside the corporation.

Somewhat disturbing the chronological sequence of development of economic and law views, it is impossible to pass round the anti-market ideas of Marxism. This doctrine contains quite a number of antinomies; so that the issues of primary or secondary nature of the categories under consideration (which are mostly discussed by the scientists) sometimes stay in the background. Nevertheless, revealing the nature of materialistic understanding of public life, K. Marx wrote: "In the social production of their existence, men inevitably enter into definite relations, which are independent of their will, namely relations of production

<sup>21</sup> See: *Burrows P., Veljanovski C.G.* Introduction: The Economic Approach to Law. P. 344-355.

<sup>22</sup> See: *Coase R.* Problem of Social Cost / R. Coase firm, the market and the right. M., 1993. P. 87-141.

<sup>23</sup> Under the external effects understood unrepaired damage to individuals or businesses for the harm caused to them outside of one's activities. See: *Burrows P., Veljanovski C.G.* Introduction: The Economic Approach to Law. 1981 (Section 1.1. The economic approach to law) // *The Legacy of Ronald Coase in Economic Analysis*. Vol. II. P. 344-355.

<sup>24</sup> See: *Rowley C.K.* The «Problem» of Social Cost / *Cheng S.N.S.* The Myth of Social Cost. CATO Paper № 16. San Francisco, 1980. P. XVII-XXII; *Mishan E.J.* Pareto Optimality and the Law // *Oxford Economic Papers*. 1967. November.

appropriate to a given stage in the development of their material forces of production. The totality of these relations of production constitutes the economic structure of society, the real foundation, on which arises a legal and political superstructure and to which correspond definite forms of social consciousness. The mode of production of material life conditions the general process of social, political and intellectual life... The changes in the economic foundation lead sooner or later to the transformation of the whole immense superstructure”<sup>25</sup>.

The determined and unambiguous understanding of law, of course, does not presuppose that the economic basis is superior to the legal superstructure, since Marxism does not deny the possibility of active backlash of the law and its relative independence. This characteristic feature highlighted the complex and contradictory nature of correlation between the economy and legal superstructure, but with the leading role of material, or production relations in the process of steady development of society or its independent units. If to sketch the interaction of economy and legal superstructure, it will be described as a correlation of content and form; however, the problem of other external relations of the law and its interaction with other components of the superstructure, meaning various forms of public conscience, is much more complicated. It is firmly established in the referenced literature that “the relations between the law and its determining factors are never parallel and independent; they are rather a chain of interdependent relations which provide limits for the material factors – being the governing ones eventually – to determine the elements of future legal rules, step-by-step, through the mental factors”<sup>26</sup>.

Along with the harmony and flexibility of the system designed by the classics of Marxism-Leninism, it obviously contains certain violations of the logic of reasoning and discrepancies in conclusions. On the one hand, it admits the existence of the objective laws of economics, but the formational view of social transformation will further lead to a conclusion that the rational development of a society prevails over and forces their spontaneous character out of the historical scene. Another confusion traces back to the fact that a deep understanding of the logic of relations established at the elementary level of the economy (the theory of surplus value) pushes the Marxists to a quite radical solution. They believe that the problem of human exploitation will be solved by the humans when the private

property is abolished. One cannot deny the consistency of their reasoning, on the one part; however, after a deeper consideration is taken, it appears unclear why they were able to see only negative effect of property and decided to throw out its vast positive potential.

Considering the postulates suggested by Marxism and the economic theory of law in the aggregate, it turns out that both theories have approached a certain critical point in the problem of correlation between economy and law. Comparing the views expressed by these schools, the main difference between them may seem to be the fact that the Marxists saw no perspectives in the market pattern of national economy and suggested to replace it by a rational system of planning of social processes and to liquidate the private property. On the contrary, the supporters of the economy of law tried to retain and enhance the market economy and appealed to the private property. Nevertheless, though each school took efforts to build its own system of reference, they worked in one direction as the key problem explored by both of them was, anyway, the property. It is indeed a raw spot in the market economy which – by no means – can diminish the advantages of the market.

Having examined the problems of correlation between economy and law in terms of economic analysis, the last thing to do is to investigate this tandem from the legal point of view. With regard to this matter, one can discover that such a straightforward statement of this question is not typical for jurisprudence; it means that it is not highly concerned about the problems of correlation between law and economy. The lawyers are more interested in the issues of regulation of social relations in general. It is conditioned by two significant reasons. The first reason is that, for many specialists, the described problem had already been solved once and for all (for example, in the theory of Marxism); there is no point in returning to it. The second reason (which is more convincing) is indicative of the fact that the common principles and approaches designed by jurisprudence continue further in this point of application since they correlate in many ways and remain within the limits of understating of the law as it is and its methodological inventory as well. Moreover, it can be readily noticed when looking through the respective works, even provided that a narrow subject of investigation is usually declared. The nature of law has been analyzed in this research in the context of the problem of correlation between law and economy. Definitely, the credibility of the given conclusions and statements will be only proved by the time and through the practice; however, there is a chance to retest their reliability in the end of the research by bombarding them with counter-arguments.

<sup>25</sup> *Marx K.* Critique of Political Economy. Preface / K. Marx and F. Engels, Selected Works. Volume 1. M., 1970. P. 335-336.

<sup>26</sup> *Nasice A.* Legislating: Theory and legislative technique. M., 1974. C. 15.

To be honest, it will be necessary at first to draw the watershed line between the conclusions about the law in general and the analysis of existing views – which are not so numerous – on the per se correlation of law and economy. Since jurisprudence was formed as an independent branch of theory and practice long before the economy emerged; the law was present even in the ancient Rome, – any reflections on the correlation between law and economy usually followed from the views on the relationship of positive and natural law. It is the natural law where the economic implications and the grounds of economic thinking can be traced to the ancient times. The New Age came fifteen hundred years after, and the classics of political economy, subject to objective trends, initiated the process of separating the economy into an independent field of study. Further assimilation of the problems of interaction between legal and economic systems logically concentrated in the bosom of political economy. Therefore, realizing the importance of the issues of interaction of the analyzed categories, the West-European scientists meticulously study them from the position of the economy, which was discovered in the course of our economic analysis.

Targeting at the objective regularities strengthened the status of political economy as a deep and accurate science. Accordingly, the aim of “ancestor” which was the economy – or the law – was reduced to maintaining its “offspring”. Moreover, unlike the jurisprudence, the political economy had tighter connections with the natural sciences which had provided it with an even greater scientific character and dynamic, and still continue to do so. On the contrary, the law has a tendency to conservatism; it is typical for lawyers to strive for enclosing themselves within the boundaries set by the legal regulations. It is not an accident that normativism appeared to be a very influential doctrine in our country as well. This is dictated by the instrumental function of law, and the fact that the lawyers associate it with the authority and power of the state which approves the legal rules.

At the same time, a very specific situation prevailed in the Soviet legal science of the first wave. It was literally infiltrated with economism; the principles established by Marxism-Leninism had a tremendous influence on it. Of course, a fateful role in the overall configuration of legal thinking was played by the definition of law stipulated in the Manifesto of the Communist Party, which said, “your jurisprudence is but the will of your class made into a law for all, a will whose essential character and direction are determined by the economical conditions of existence of your class”<sup>27</sup>. The fatal dependence of law on the economy is clearly visible through this definition.

At the same time, the status of the law somewhat improves when the classics say that the law constitutes such an element which is located in the closest proximity to the economic basis in the entire superstructure<sup>28</sup>.

In addition, the concept of will which is used in this formula distorts the familiar idea of this category when viewed in conjunction with other terms. It is widely known that this term has evolved in the natural law doctrine. For our contemporaries, the concept of will usually accommodates two interrelated views. Firstly, it is the common will of the political center concentrated in the form of a regulatory document which reflects the requirements of objective regularities. Secondly, it is the volitional acts of individuals as a reaction to these legal rules. In contrast to these arguments, the strong-willed actions dominate in the notion of law given in the Manifesto. The classics of Marxism did not modify their position elsewhere, noting that the legal relations, like the other form of government, can be understood neither of and in themselves nor as the result of the so-called general progress of the human mind, but that they are rooted in the material conditions of life is a contract – all the same whether it is fixed by law or not – there are strong-willed attitude, which reflects the economic relation<sup>29</sup>.

Still, the flexibility of presentation cannot hide the fact that the economic motive (material interest) of people’s volitional actions prevails in these judgments. In fact, a fundamental condition of the economy which is the objective laws has been thrown into the background. The result is that the economic egoism subjugates the economic laws. It seems to be clear that the classics of Marxism wanted to say, but there is a persistent feeling that a certain substitution of concepts has taken place and that something has been turned on its head. Doubtless, the actual practice of socialism has responded to this statement quite adequately, meaning that it was reduced to an elementary voluntarism. Thus, V.P. Shkredov wrote that “contrary to the principle of independence of the economic laws – being those of objective nature – from the people’s will, the starting point used to explain the economic phenomena of the socialist society was represented by volitional relations, or conscious and purposeful activity of a single economic center aimed at managing the social production through the plan covering the basic processes of economic development”<sup>30</sup>.

The described conceptual aspects became the basis for the respective concepts in the Soviet legal science and identi-

<sup>27</sup> *Marx K., Engels F.* The Communist Manifesto. V.1. M., 1970. P. 122

<sup>28</sup> See: *Marx K., Engels F.* Collected Works. 2-nd ed. T. 21. P. 310.

<sup>29</sup> See: *Marx-Engels* Collected Works. T. 23. C. 94.

<sup>30</sup> See: *Shkredov V.P.* Economics and Law: Experience economic and legal study of social production. 2-nd ed., Rev. and add. M., 1990. – 245p.

fied the principal approaches to the problem of correlation between economy and law for many decades. It is therefore not surprising that the denial of law and the sole power of economic determinism were replaced by the dictatorship of the law in the historical course of the Soviet legal science. If a theory has any ambiguity or uncertainty, it will act as a kind of trap, even for those who decided to implement this theory, though being genuinely mistaken. However, the elastic formulas and vitality of economism did not save the Soviet system from its fatal outcome. But at the same time, though not for long, it gave an opportunity to expand the concept of the law so that it came to incorporate both economy and other social relations. This brings us back to the very, incredibly tenacious, ideas of natural law, which unites with the positive one to compose the law itself. This implication can be perceived in the following reflections. For example, P.I. Stuchka believed that the law was a form of and, in particular, the formal mediation of the economy which stood out as the content. In his view, the legal system comprises the content – or public relations – and the form of their regulation, support or protection, which includes state authority, laws and so on<sup>31</sup>.

Consequently, analyzing the law as an order of real social relations, P.I. Stuchka thought about going beyond the limits of traditional legal science which was aimed at studying the proper legal phenomena. It was absolutely necessary to break the boundaries of purely legal institutions, because otherwise it was possible to be captured by their abstract logical structures, which sometimes failed to match the reality. In order to find the real content of the legal form, E.B. Pashukanis broke the mentioned limits in the same manner<sup>32</sup>.

The above considerations suggest that the law should be studied in the very social relations that form the living fabric of the social organism. J. Karner was likely to express the same thought, assuming that the real science of law begins where the jurisprudence ends<sup>33</sup>.

By the way, in spite of the fact that all these scientists were genuine supporters of Marxism, it was the ambiguity and flexibility of its formulas (a blessing in disguise!) that inadvertently helped them to look into the essence of things.

If to turn to the contemporary studies of the concerns regarding the correlation between economy and law (in the context of the market economy being developed), then again,

an interesting paradox emerges. For example, A.V. Petrov noted that the Marxist approaches were not directly asserted in many modern studies, but nothing new was offered to replace them. Therefore, the problem itself, if there is any, is presented in a rather indistinct and indeterminate form<sup>34</sup>.

In fact, Marxism is deeply rooted in the minds of Russian scientists. It was promoted by a powerful propaganda machine, and it was the whole society of scientists that had been raised in line with its legacy, rather than just a few generations. And we have to admit that the methodology and the scientific world view of Marxism relied on the in-depth studies in the humanities, and offered a dynamic, holistic and systemic vision of reality. However, this justification is not enough to explain the restriction by the boundaries of frozen ideas. In his writings, K. Marx himself repeatedly asked not to confuse his postulates for the absolute and final truth. Each subsequent stage of social development requires the science to reflect a more accurate picture of reality. Therefore, only the expansion of the horizons of research and improvement of its methodology may contribute into elimination of the mistakes and failures of Marxism and other “isms” revealed by public practice. At the same time, it is hardly possible to comprehend the nature of social relations without even a bad experience and erroneous ideas. It would be indeed absurd to reject those of its provisions that have stood the test of time.

However, it is typical for modern writers not to equate their views with those stated by Marxism. Thus, A.A. Larin wrote that, in contrast to the Marxist classics, he is in no way trying to prove the exceptional importance of economic factors in shaping the law or conduct of individuals. Economic factors affect the right, along with others<sup>35</sup>. T.R. Orekhova noted that the dependence of law on the economy and the production relations prevailing in the society, under the terms of Marxism, had limited, to a certain extent, the interpretation and meaning of law in society. She believed that the nature of interaction between law and economy and its forms were conditioned by various factors; these phenomena were interdependent, they interacted with each other, rather than simply correlated with each other. There are many approaches to the classification of social systems in the history of mankind. However, when analyzing the problems of correlation between law and economy in various social systems, it

<sup>31</sup> See *Stuchka P.I.* Selected works by the Marxist-Leninist theory of law. Riga, 1964. P. 52, 296.

<sup>32</sup> See: *Denisov YU.A., Spiridonov L.I.* Abstract and concrete Soviet jurisprudence. L., 1987. P. 32.

<sup>33</sup> See: *Karner I.* The social functions of law. M. – Pg. 1923. P. 11.

<sup>34</sup> See: *Petrov A.V.* Law and Economics (relation to the problem) // Bulletin of the Nizhny Novgorod University. A series of “law” 1998. URL: <http://www.unn.ru/rus/books/stat3.htm> (date of access: 12.03.2010)

<sup>35</sup> See: *Larin A.A.* The role of economic factors in the development of the law: the Abstract diss ... Candidate-ta jurid. Sciences. Nizhny Novgorod, 2007. P. 13-14.

is expedient to follow the path of their classification and investigation on the basis of the market economy which can be either developing or missing in the society<sup>36</sup>.

Neither T.R. Orekhova, nor A.A. Larin undervalued the importance of economic factors in the emergence of law. It is also typical for them to understand this correlation in terms of the role played by the economy in the genesis of law, which means that the economic relations are considered as a social source of emergence, existence and development of the law. Some similarities may be found here between the opinions expressed by the above mentioned authors and the views of V.M. Vedyakhin and S.N. Revina<sup>37</sup>.

It should be noted that, having dived into the depth of economic ideas and problems, T.R. Orekhova and A. A. Larin really made an attempt to go beyond the boundaries of the law concept with the aim to approach the place “where the real jurisprudence begins”. Their creative works enriched the science of law with the concepts, terminology and even categories which are inherent to the economy, such as “expectation” (of an individual, group of individuals, society, or state), “trust” (of the economic agents to one another, to the state and vice versa), “alternative value”, “public choice”<sup>38</sup> and many others.

The works by V.M. Vedyakhin, S.N. Revina, T.R. Orekhova and A.A. Larin re-addressed the problem how the economic laws were reflected in law regulations in the specific aspect of jurisprudence, which had already been raised in the literature before<sup>39</sup>.

Rather unique view on the outlined problems was suggested by A.V. Petrov. He believed that all phenomena of human life equally contained a spiritual basis, meaning that they had the same origin which was the human spirit; accordingly, no component of the spirit could be determinative in relation to the other, – they complemented and enriched each other. The previous history of mankind is the history of its isolation from nature and taking advantage of it. In this regard, the economic interests and needs are critical and determinative in the society. At the present stage, according to this author, the economic needs gradually fade into the

background in the course of development of material production, and start to function as a kind of objective which has already been solved for the spirit. This does not mean that the economy and its development in general are no longer meaningful for mankind, or that the economic problems are fully addressed for every particular nation. But in fact, the economy has never been primary and determinative with respect to all other spheres of public life; therefore, the law cannot be regarded as a phenomenon eventually determined by the economy. Law and economy, politics and religion, ideology and science originated from a spiritual basis on their own, rather than through the other one<sup>40</sup>.

Thus, the author expressed his doubts that the economic relations were the basic and determinative ones with regard to the other spheres of human life. Therewith, he rejected the Marxists’ statement that the content of any human interest, ultimately, was defined by a material, or economic motive. Accordingly, the law was not meant to originate from the economic needs and to exist with the main purpose of servicing them. In our opinion, even given the great progress that mankind has made in technology development and meeting material needs, the economic needs are still the most important and dominant. Proceeding from the realities of life, when millions of people around the world continue to live below the poverty line and many of them are starving, while the natural resources are drastically depleted, the value of economy is unlikely to diminish even in perspective; it is most probably to grow.

From our point of view, the position described above has a core of good sense in the way that since all phenomena of human life equally contain a spiritual component as a common fundamental basis, then a certain parity between economy and law builds up, meaning that the law tightens up to the level of the economy. At the same time, if to consider them in the light of spirit, an essential difference between them can be perceived. As a system of economic relations, the economy, on the one hand, is influenced by the legal acts, but on the other hand, it is elastic with regard to the human egoism, which should be controlled by the law in the ideal conditions. In this case, the economic laws have an objective character; they do not depend on the will and conscience of a human being, but function for the sake of a human being because they are intended to reduce the costs of human imperfections. The law is formed and exists as a result of volitional human activity. On the one hand, it is itself a phenomenon created by the human will, thus accompanied by the inevitable deviations from the requirements

<sup>36</sup> See: *Orekhova T.R.* Correlation of Law and Economics: (General theoretical aspects) / Avtoreferat dis. ... kand-ta yurid. nauk. M., 1999.

<sup>37</sup> See: *Vedyakhin V.M., Revina S.N.* Principles of legal regulation of market relations. – Samara, 2005. – 220p.

<sup>38</sup> See: *Orekhova T.R.* Correlation of Law and Economics: (General theoretical aspects) / Avtoreferat dis. ... kand-ta yurid. nauk. M., 1999.

<sup>39</sup> See, for example: *Bratus’ S.N.* Subject and Soviet civil law system. – M., 1963. P. 138; *State, law, economics* / edited by V.M. Chkhikvadze. – M., 1970. P. 72-73; *Shkredov V.P.* Economics and Law: Experience economic and legal study of social production. 2-nd ed., Rev. and add. – M., 1990. – 245p.

<sup>40</sup> See: *Petrov A.V.* Law and Economics (relation to the problem) // Bulletin of the Nizhny Novgorod University. A series of “law” 1998. URL: <http://www.unn.ru/rus/books/stat3.htm> (date of access: 12.03.2010)

of objective laws. On the other hand, the law influences the will of people who are not always obedient to its instructions.

If to apply these reflections to the idea suggested by A.S. Petrov, it turns out that it is only the law that should be attributed to the spiritual realm. Indeed, when compared to the law (which is, in any event, a product of human consciousness and will), the economy does not appear to be a purely spiritual sphere; the economic laws play the major part here. In other words, the spiritual people who are relatively free in the choice of their behaviour enter into the production relations, but their economic relations are adjusted at a certain time by the objective laws which are beyond the human's control.

The following conclusions may be drawn on the basis of the analysis carried out with regard to the correlation between law and economy using synergistic, phenomenological and anthropological approaches:

Firstly, it is obvious that the relevance of this problem being explored will only grow with the progressive development of society; and it will continue to be the subject of sharp debates because an optimal formula of correlation between law and economy has not been found yet. Historical analysis shows that the interaction of law and economy has its own specific features in each country due to the differences in religion, culture, moral values, lifestyle, but there is something common and important for all social systems hiding behind the described diversity. It is the aim to ensure high standard of living and support the growth of social welfare.

Secondly, the free-market exchange of the products of labour is mostly suitable for the human nature and society, since it is connected with the human concepts of equality and freedom. The exchange relations resulted from the division of labour and its specialization meet the basic principle of economy which is equivalence. The division of labour in conjunction with the competition drives the social progress as the competition forces the firms to be more consumer-oriented in their economic activities, to maximize their production efficiency and thus to assist the growth of social welfare. As it was shown by the practical application of directive economy by the rule of contraries, the legal regulation must not go beyond the framework conditions set for implementation of economic initiatives (the equality of starting opportunities), for establishment and protection of property rights, for fair competition, and for other general principles of market operation and legal registration of a balanced fiscal policy. The legal regulation of economic relations should be so deep and accurate to be able to correspond to the self-acting process of approaching the economic equilibrium being an inherent economic law. This environment gradually forces the economy to achieve

(under the influence of internal forces) the equilibrium; while the law is aimed at assisting the economic balance at the macro and micro levels. Hence, the law should take efforts to structure the economy on the basis of the objective regularities inherent in the latter.

Thirdly, a rather complex structure of the interrelation of economy and law is caused by the major determinants of both categories. The objective laws play a fundamental role in the economy, while the law features the common will of citizens expressed by the state as a basic component. The best way to represent the character of their interaction is through the hierarchy of essences. In our opinion, the economy is the essence of law, but the essence of economy is the equilibrium, or (which is the same) justice. In other words, the essence of economy, meaning the essence of the second-order law, is the balance of equality and freedom, which can be represented as an overlap of two equilibria that are simultaneously established in the market, namely the equivalent and free exchange between entities (1), and the balance of property rights directly in a corporation (2).

Fourthly, to ensure the efficient interaction of economy and law, it is necessary to comply with the principle that the law does not dictate what the parties to any conflict must do in a particular situation, but only fixes the rights of the parties backed by the law, enabling them to seek an agreement on the basis of recognition of these rights. Everything taken together ensures the economic growth and social equity, which means that it improves the welfare of a society to the maximum<sup>41</sup>. The regulating function of law will be minimized provided that the rights of owners are exactly specified and the credibility of law as a guardian is high in the eyes of civil society. It is, therefore, required to work out the regulations on the basis of a comprehensive economic analysis penetrating into all branches of law. As R. Posner stated, "the economic science is a powerful tool for analyzing a wide range of legal issues"<sup>42</sup>.

Fifthly, the economists try to move away from the usual arguments about the justice, discussing instead the problems of efficiency. They argue that, when assessing any law, it is necessary to pay attention to the fact how it will affect the behaviour of people who know the laws and reasonably plan their actions, rather than how it will act in individual cases. However, in our opinion, the categories of efficiency and justice are firmly linked to each other. Therefore, the thesis

<sup>41</sup> See: *Posner Richard A. Economic Analysis of Law.* – St. Petersburg. 2004. P. 33.

<sup>42</sup> See: *Posner Richard A. Economic Analysis of Law.* – St. Petersburg. 2004. P. 3; *Duxbury N. Patterns of American Jurisprudence.* – Oxford, 1995. P.314.

that the economic analysis discovers convincing arguments to justify the legal rules from considerations of efficiency and, seemingly, in opposition to justice, is wrong. Certainly, the economic analysis of law focuses on those appearances

of complex relations that cannot be noticed by other analysts. In addition to the depth of analysis and its accuracy, the economic approach ensures the unity of separate branches of law which is often lacking in traditional legal analysis.

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