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A Study of Cultural and Economic Challenges Based on the Attitude of Islam

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Abstract

Law have been investigated from a variety of perspectives, and economic analysis of law may be one of the most important theories that many politicians have nowadays exploited. The thinkers who laid the foundations for this thought were all their efforts to move the great wheel of law to efficiency, and put efficiency as analysis foundations all legal issues. On the other hand, there is the Islamic thought that attempts to establish justice on the basis and foundations of all the law analysis based on verses and hadiths.

Keywords

Efficiency, Inequality of Information, Redress Solatium, Utility, Economic Development, Equanimity Justice.

Introduction

Law science has passed through various passages during history. This science was plaything of autocratic rulers in part of the history to make it a means of sustaining their power, and once it was for the rich and merchants to use it as a means to increase their wealth. They put this science in different positions and interpretations that the most important task of the prophets and the divine goddesses was to know the right of this science to the people and to put it in its position and place so that justice in the real sense be realized in the society. One of the attitudes that greatly

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influenced the science of law and its stability converted to anger and anxiety was the economic attitude to this science. Despite the ability to survive and preserve its law in history events, this thought reduced its status by changing its ideals and created a means for the growth of the more inequalities of the poor people of society. Although the most important mission was to optimize the allocation of resources in order to achieve satisfaction for all human, but the utility for some people became displaying all the utility of all and maximizing benefits became the duty of all. This paper tries to review not only the foundations of this field but also some of its tools. Therefore, in chapter 1, the theories and its fundamental explanations were outlined, then the most important tool of this field which is rationality was discussed, and its shortcomings were reviewed. In chapter 2, from view of Islamic theorists and intellectuals, the law and economic were investigated.

Chapter 1: The most important shortcomings of economic analysis of law from the view of doctrine

The use of the vague concept of efficiency, and the emergence of postmodern theories of efficiency, gave rise to fundamental implications in the American law philosophy, with the systematic descriptions that it came to suggest that the efficiency of a legal system and the rule of the law should be based on the concept of efficiency, and justice is the result of this concept. .

Perhaps the reason for those who prescribe normative economics for law is correct because they correctly stated the high cost of trading and the inefficiency of legal rules as one of the main reasons for the failure of the market. But the fact is that the use of economic tools, such as statistic, graph and the use of criteria such as cost-benefit and inattention to ethical values have led to the degradation of the law of sciences to the measurement and acquiring of income and profits. Ethical principles have become a complete subjectivity, and there is no position for them in these theories, and the direct consequence of this is the emergence of non-ideal scientists who are merely thinking about measurement of profit and loss, while the relationship between law and ethic has a very long history, which by quantifying the principles and rules of law, has led to a deep gap between these two sciences, and the fairness has fallen from their metaphysics and will not be taken into

account in the analysis of efficiency. This shows that economic analysis of law rights has been diverted from its own path, and this is confirmed by Posner that world is worse than injustice that resources are wasted.

Generally, from the view of Western scholars and most non-Muslim thinkers of justice, since it is not inherent, one may not regard the value of essence of a thing. Normally, criticism of the economic analysis of law is not related to the concept of justice, but applies to concepts such as justice and fairness, and its adaptation with concept of efficiency. Therefore, this chapter focuses solely on the shortcomings and practical inefficiency of economic analysis of law.

First speech: Intellectual fundamentals shortcomings of economic analysis

Jeremy Bentham (1741-1832): Bentham is the founder of the Utilitarianism school. For a closer look at Bentham thoughts, it is necessary to explain their position to the concept of law, then take a brief look of the implementation shortcomings and disadvantages of the of their thinking. According to Bentham, the right is the name of an imaginary creature which is forged by imagination for using in dialogue, and it is not very necessary that dialogue without it is impossible, and having right was talked, the retain the right, and acquiring and transferring of it so that it were a material object that can be in the hands, kept and then abandoned. Law is really an unrealistic name for an imaginary creature. Now, with this kind of attitude that Bentham has to the position and concept of right, he expressed his belief in the beneficial originality that all human thoughts and judgments depend on the two concepts of pleasure and suffering, and all his purpose is the adsorption and desorption of it, and everyone pretends that he/she is not dependent on pleasure and suffering, and leaves himself/herself free of this and does not know what he/she says. In any case, human chooses to escape from suffering and gain pleasure, even in those cases where the face of austerity is dominated, such as sacrifice that does not take place without calculating pleasure and suffering. He believes that every social act must provide the maximum utility and efficiency for most people of society. In this case, maximum utility and efficiency have been achieved, and whenever this form of

utility is provided in society, justice has been realized in society. In fact, the injustice society is a society whose people are significantly less happy than what is needed. Bentham sees the legislative basis as universal utility. Basically, no decision should be taken unless all the pleasures and suffering resulting from it have been calculated. According to Bentham, every single member of the society should have a welfare thermometer, so everyone can determine their own well-being. But Bentham view was intensively criticized. Bentham and some of the English writers believed that empirical criterion became the alternative benefits and pleasure of Global and absolute criterion, and should be considered as resuscitator the Epicure famous philosopher, a well-known philosopher before the BC. He and other sophists believed that human was a measurement criterion of everything, including good, bad and justice. Epicure was the first person to measure the two concepts of good and bad with the pleasure and suffering criterion. Protagoras also believes that human is the criterion of everything because human states are constantly changing and in different modes have different perceptions and supports. Human is the criterion of truth, the scale of being in things that are present, and nothing scale, in things that are not, and they encounter this thought in the range of absolute skepticism. Also Paul Foulquié believed that the skeptics have no criteria for defining the right and error, and the perceptions and misconceptions in their thoughts are as similar to the correct assumptions and conceptions that they may not be ranked among them. It is not possible to say which is error or right. But this thought has been criticized many times since Socrates to this day. According to Socrates, this kind of attitude towards the concept of right and other ethical values makes that constant anything do not remain in the world, which will destroy human societies. People are always in a fight to prove their own opinion, because there is no absolute criterion for judgment. Only anyone with more power or stronger speaking is right for him/her. But the weakness of this thought is that if the reasoning broker was asled, where did you find that the wisdom and the sense of the matter are wrong? If there is no criterion and logic for this and there are no constant propositions, then how can one understand the error of some knowledge, and if the logic and criterion have inference here, elsewhere also it should be inference, and thus plays

a role. Consequently, the certainty and beliefs can be achieved with that criterion and belief, and this constant criterion is the same as evidences that the sense and wisdom are unable to understand. Although this paper is not about fundamental and philosophical topics, but critique of Bentham's thoughts is not correct without critique of his intellectual foundations. But if the philosophical weaknesses of Bentham's thought do not consider, it is still very difficult to accept that profiteering is the only motive. And the feeling of homework, desire, and motive to supreme and kind have no role in human decision making; profiteering is a desirable description, but not so much as the goal of humanity and the criterion of ethical assessment. Also, from the practical view, there are more problems. Firstly, how can basically assess the pleasure of the suffering, or is there a constant amount of measurement. Given that the leaders of this thought have rejected any kind of constant truth in their intellectual foundations, and put human as basis, now the question is, what is the criterion of superiority over one another in judging between the pleasure and suffering of two people? Secondly, in Bentham theory, there is no local distributive justice of the Arabs, and this can also be natural because the existence of a kind of distributional attitude closes the way for answering the previous question and face the operation of Bentham's thought with difficulty, as well as the inexperience of individuals in calculating profit and loss is another reason.

Vilfredo Pareto (1848-1923): The famous Pareto theory, which is used extensively in economic analysis with its deficiencies, have not lost their status among experts in economic analysis. Pareto, who was upset from the pain of injustice in society and poverty and hunger among members of society, put forward his theory of how to policy-making in society, and his idealization consider as a fair distribution of capital in society. In his view, for each legal system, two missions should be defined:

First: Providing social justice; second: economic development and efficiency

At the same time, the society considers the principles and criterions of justice should do all effort to make it efficiency. Pareto posed the 3 situation. Initially, he outlined a situation that is known as Pareto's superior model: moving from one distribution point to

another point, at least situation of one side (or both sides) became better and the other person will not get more worse in situation, and his/her well-being will not change before and after the move. This method is very vital in economic analysis of contract law, and it can also be used as a tool of measuring the health of contracts concluded in accordance with Article 10 of the Civil Code, which are not within the framework of certain contracts. For example, in monetary and financial markets such as banks, insurance companies, stock exchanges, Fara Bourse which do not have the certain contracts to manage the risk of external factors in the market Individuals and companies may be able to establish an appropriate contracts to the conditions of these markets. In this case, the use of the Pareto superior model to support a party that has less information or an inappropriate economic situation can be somewhat effective. An authority contract is known contract in the stock market where one of the parties assigns the righty to one another to sell or purchase a certain thing in exchange for a certain alternative and in a given time process. Individuals who do not have sufficient experience, correct information, and the appropriate opportunity to conduct the stock exchange trading, In order to curtail the potential risks of price fluctuations, such contracts are concluded with equity funds and thus manage the risk associated with stock purchases. Investor by taking a portfolio of stocks in one of these funds pledges the fund to buy the stock that has the most returns, for a sum of 100.000 tomans, and whenever the value of those stocks fluctuates, to buy or sells to maximize profits. A person contributes in its profit and loss by purchasing stocks, although it subject should be examined as economic analysis in a separate paper but it is useful to clarify the Pareto's superior model. 1) Pareto's superior says that the fund must provide sufficient information for investors and buy the most profitable stock for them. 2) Funds, since they have various portfolios of stocks, usually if they suffer in one of these portfolios, they will be compensated in the other portfolio. Therefore, in the opinion of the author, the mere sharing of the investor and fund in the profit and loss from the purchase of a particular stock may not be able to realize Pareto's superior model, and the fund will generally benefit and the investor will lose the same amount of capital. To solve this, a solution must be measured. But the second situation that Pareto

put forward is the Pareto inferiority model. In this mode, moving from one point to the other, causes situation of one person became more worst although situation of all became better, which in Pareto opinion is bad. The third situation Pareto put forward is Pareto optimality situation (Pareto efficiency), in which case the status of a user without reducing the utility of another user may not improve. In these conditions, the market is in full competition and the resources are best allocated, for example, imposing a fault-based liability for wheat-producing farmers, it seems that if this state change in any other way, some farmers may be loss. For example, if there is a fault-based liability, people have less tendency to find jobs, so production decreases, and in addition to the unemployment and bad outcomes bring economic dependence. Of course, can divide can be divided into two cases, which are both parties at the time of the conclusion of the contract, and in the case of the municipality or any person who is in the process of decision making. In the first case, any change in conditions that is harmful to the contracting party, such as the above in the contract that the farmer concludes with a contracting company, for the sale of 10 tonnes of wheat, which is delivered six months after the conclusion of the contract, if creating the fault-based liability put both sides in a beneficial manner, and does not cause harm for anyone, but Pareto's optimality situation has been realized Second, any decision taken should not harm anyone, even though his/her condition does not primarily relate to that decision, such an imposition of this form of liability should not be detrimental to the factories that use that product. But the failure of Pareto's efficiency is first of all, the balance may not impracticality created between the profit and loss. Occasionally, evaluable benefit may not be valued at market prices, such as clean air when companies are forced to comply with environmental standards. Costs may be incurred for them, but income for the revenue generated for us, there is a clean air that may not be measured with money. But Pareto, like other economists is captured in the deep marsh of assumes the existence of a full competition market, and with this assumption, put his theory based on the non-interference of the state in the market so that the market itself can fulfill justice, but it is a serious obstacle to the practice for applying Pareto efficiency because the resources are not originally fairly distributed. Another point may be that it is

possible to analyze that, in principle, any rule of law which increases the utility and productivity of a person and reduces the utility of the other party. Therefore, the Pareto model is impractical. Perhaps this is an objection, but this is not the case in judicial judgments, because if there is justice in the justice system, a judgment is typically issued in favor of someone who has missed the balance of interest and the judge has made his decision on the Pareto efficiency.

Richard Posner (1939): Posner, a professor at the University of Chicago, has been his role in developing economic attitudes toward law to the point where he sees them as the founder of economic analysis of law in the modern sense. Posner's theories in the field of economic analysis of law have different attitudes reflecting on their thoughts and merely expressing the famous theory in the field of utility, they leave us from the correct and systematic understanding of the economic analysis of law. Posner believed that the design of the structure of the science of law was a waste of concept, which even assigned his Ph.D. Thesis to confirm his theory on this subject. In his view, ethical theories may not provide a solid foundation for ethical judgment, let alone the basis for the law of legal judgments. He offered criticisms against ethics, legal theory, and ethic academic, and many emphasized that the law and ethic should be separated. Posner had a special worldview that could be seen in the context of Skepticism and pragmatic scholars. According to Posner, one of the peculiarities of religion is that whatever is in conflict with the intellectual paradigms, is used and, indeed religion is a local, thematic and anti-thought phenomenon, and it lacks a kind of intellectual thought that can change its mind to each individual's thinking. Posner is the founder of a utility doctrine in the modern sense of philosophy of law. He believes that by displaying the philosophy of ethics, people really adopt rational behavior before being guided to ethical behavior. Therefore, with the disappearance of Posner thought of ethical principles and rules which, even in some sentences, explicitly admits that he hates ethics. He sets out the principles of the rules of economic analysis of law. But question is how civil society can be unconsciously convinced by the will to obey a law that is rooted in stability affairs, and supernatural principles. Another one, if ethic was leaved, philosophy and religion to the point of departure, what

rational choice can be adopt to put the foundation for judicial ethics on it? Now, by clarification of some of the Posner intellectual foundations, the state their position in terms of utility and efficiency can be better. He considers the rules and regulations as efficient and utility which provide maximum wealth. In the case of employer and worker contracts, the conditions that limit worker privileges to the employer, which is more likely to be in cases where the law of labor has been silent. Confirmation and enforcement of these conditions is not due to the principle of freedom of contract, but also to increase the willingness of companies to enter the industry and not obstacles to this. Although it has a beneficial effect, first of all, the creation of competitive markets and the optimal use of resources, ultimately industrial society and maximizing profits, but these are in exchange for imposing a miserable life on the poor population of society in order to stop them from moving the ship to save society. Reducing job security, reducing purchasing power, weakening health, and increasing the incidence of illnesses, all of which suggest that Posner theory is merely an increase in wealth, and that the initial distribution of wealth has no meaning for him and only reflects the current situation. He does not consider the infinite angles of individual utility and only pay attention to its wealth, while there are utility to some people of society. Each one may enjoy a particular state of affairs, and other problems such as ethics, is lost in Posner attitude.

Second speech: Tools shortcomings of economic analysis

Until 1970s, economic analysis of law was more systematic, and the methodology was based on individualist models, but since 1970 there has been a reasonable assumption that individuals make a reasonable behaviour. That is, individuals decide by studying the effects and consequences of each act and its profit and loss.

The purpose of rationality in the economy is how an individual reacts to price changes in the market, which the supply and demand chart indicates it. Rational behavior is a human behavior that a person chooses among his preferences. Peyman prefer A which is travels abroad, on B which is play soccer, and prefer b on C which is rest at the home. He prefers A on C on the basis of the transferability principle. The opposite of A> B> C ← A> C is

irrational behaviour. A particular person may violate it, but this rule prevails in market behavior, or maybe a manager in a particular company does not comply with this rule, and gives more salary to workers or comply higher standards for environmental protection, but company managers generally do not do this. And this does not mean that a wise human is an egoistic being, but maybe human is sacrifice, but it still call the wisdom because he/she tries to reach his/her goal in the best possible way.

Rational behavior results in the highest level of utility and is used as the most important tool of economic analysis of law.

Rational behavior in the legal system is prevent resource loss and to maximize efficiency. If the basis of the liability of the car manufacturers is strict liability

Iran Khodro Co. produced about 1000 Peugeot 405 in the year 2003, which had a technical problem, which caused the car to explode after the start, causing death or injury to its occupants. By putting fault-based liability on those who did not have the ability to prove the fault, they were severely damaged, and the company continued to manufacture its products, but this rule was not efficient in terms of the principles of economic analysis because the company wasted a large amount of resources and in contrast, it did not even provide the least efficiency. But by shifting the basis of liability to the strict liability, companies were forced to pay more to manufacture more safe machines, thus providing the minimum resources for maximum returns, as well as risk put as the liability of the air carriers, or in contract of guarantee, guarantor dubiety was preferred on guarantor quotes, everything is based on avoiding waste of resources and maximum profitability.

But this hypothesis has many shortcomings:

1. Mistake: Individuals may be mistaken in future estimation and decision-making. For example, a person wears a raincoat but it does not rain, or a company invest to gain a profit if the market conditions change, but the conditions are not in the interest of him/her, and he/she losses.

2. Unrealistic promotions: Sometimes with unrealistic ads that come from goods, people may not behave in their choices, rationally. When company advertise their goods and commodities, it is not for the consumer's pleasure, but for referring it. So, since repurchasing is a criterion for him/her, it may be promoting a

higher quality for its product. It is difficult to say that if there were no such ads, people would rather eat milk instead of smoking, or instead of having to buy the goods when they were old, they would buy again when they were destroyed. But I say this explicitly that advertising causes a person is encouraged to make artificial decisions that are inconsistent with the reality of his/her profit and loss.

3. Information deficiencies: Generally, the measurement of profit and loss and the future estimation requires information that the deficiencies or violation of this information is equal to the wrong decision -making choice.

4. Variety of behavioral backgrounds in an unusual fashion: Although this hypothesis has serious implications in the market environment and economic relations, its actions are far more inefficient in terms of rules of law at a wider level, because in some behavioral backgrounds, individuals sacrifice material value for their immaterial utility or prefer spiritual goals such as justice to every pleasure.

5. High cost of information acquisition: Sometimes there is a high cost of acquire to information, which increases the inequality among individuals, as well as its analysis is along with intellectual constraints (Simon, Nobel prize winning)

6. Habits and customs governing on society: Generally, in different societies with diverse ethnic backgrounds, some behavior are found based on the cultural backgrounds, and the calculation of profit and loss does not have position in it. Therefore, the rules of law based on the rational behavioral hypothesis that empowers individuals to terminate a contractor for example, or to sustain a contract and receive damages, without supportive policies, may be profiteering to some who are in a better condition. To illustrate this subject, it is necessary to take a quick look of the rights of contracts. The contract law and the contractual free that makes the foundation of the market economy do not go beyond the economic analysis of law. Unfortunately, the shortcomings of the economic analysis of law have caused the contracts to be eliminated from the law of justice and unable to establish justice between the parties. Some believed that economic analysis of law of contracts has failed, but it does not mean that it may not describe common law systems, but has failed to provide the goals of contract law, which

is the equality establishment in the same sense of freedom between parties to the implementation of justice, that the allocation of resources is an unrealistic duty of contract law, but is not really the goal of contract law. In this paper, the shortcomings of the economic analysis of contract law were briefly reviewed.

1. Ethical degradation of contract law: The economic analysis consider all duties and liabilities of contracts as risk assignments, and ultimately earn maximum efficiency and, based on the same principles, durability and collapse of contractual obligations are prescribed or rejected. And the noble concepts such as devotion to the promise have been plaything of profit and loss and the changes in the market situation, but the point is that if ethics and requirement was discriminated, how can economic values provide understanding of contract law for us?

2. Inequality of power between the parties: This is so many for labor law that, even in cases where the government raises the minimum price, the worker himself offers a lower price for poverty and hunger, which has already been imposed on him/her and gives them unfair contracts, and the other case is consumer rights which is a lot of mischief. Usually in other markets, especially in developing countries where competition law is inefficient, the supplier can apply his/her will for price change or restrict the supply. However, the inefficiency of competition law is affected by several factors, including an adaptation of the rules of competition law from industrial countries, while the set of trades, behaviors, ethics, customs, and diverse culture in markets varies from market to market. Competition law is obliged to draw up a structure that regulates the market and other behaviors that govern it. Therefore, the crisis of adaptive regulation is much more acute than its absence. Secondly, unfair laws imposed by international organizations such as the World Trade Organization and imposing on the weak countries that these materials should be studied by experts.

3. Inequality of information: Contractual rights can be defined as: an obligatory commitment that a person enters into himself will do something in the future. The most important element of this definition is an obligation to the future that requires having at least the right information to make a decision, although this sometimes causes waste of resources, but what is lost is not resources, but

justice. Another the assumptions made in contract law is the assumption of a complete contract. A contract that allocates risk that can best be avoided, and the important duty of contract law is to fill the gap between the complete and incomplete contract. The contracts law must specify the full terms and conditions of their legal process and the costs of doing so, and they can replace this agreement, reflecting the current status of the business and the allocation of risk, the most comprehensive tool for the realization of this mission is negotiation mandate, but the reality is that inequality of information and power the equations change these negotiations.

4. Inefficiency of redress solatium scales: One of the scales that have been proposed to redress solatium for a breach of contract is the expectation scale, which means that the amount of profit expected by warrantee will be earned by the contract and in the event of a breach of contract must be paid by pledge, but the defects are:

A. The damage expectation is a general one and there is no reasonable prediction.

B. Probable and unpredictable probability.

C. It is difficult to apply.

D. The expectation of damage depends on the warrantee capital, so that the higher its capital, the greater it will expect profit, resulting in an increase in the inequality of the parties. There are other violations, but I still emphasize that these criticisms do not suggest that the economic analysis of contracts law is abandoned and or else it should not rely on it, but by eliminating the shortcomings of private law and aligning it with public law, this science can be used in its proper direction.

Chapter 2: Shortcomings of economic analysis of law from view of Islamic Ideology

In this paper, economic analysis of law has been critically examined in two respects:

First: Intellectual foundations, second: review the implementation tools.

First speech: Analysis and review of the Justice concept based on Islamic Ideology

In the previous chapter, there were more criticisms of the unwanted effects and consequences that occurred during its implementation to legislate and formulate legal constraints affecting society, especially the poor people and the government. In this section, the intellectual foundations of this school are examined based on Islamic principles. Finally, it is tried to provide a proper solution for using the economical tools in the analysis and formulation of rules of law.

The two themes that can be understood to clarify the nature and truth of the relationship between law and economic, and for its users, whether in the area of judiciary, attorney or legislation, create a proper understand, is what is justice and methodological use of it for economic analysis of law. Another is the rule of prohibition of detriment that, according to Shahid Motaheri, One of the other ways in which the Islamic religion has been motivated and adapted and kept alive is a series of rules that have been laid down in the religion itself, which control and regulate laws. Jurists call these rules the governing rules, such as rule of prohibition of detriment and rule of canonical and legal maxim, who govern all jurisprudence, and in fact Islam has vetoed these rules in relation to other rules.

يا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ ۖ وَلَا يَجْرِمَنَّكُمْ شَنَآنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا ۚ اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ ۖ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ.

The people with faith be stable and firm in the way of God, and indicate justice and truth. Of course, you should not go out from justice because of the group hostility, justice is closer to piety, and fear from Goad that He is aware of everything. Justice is an innate civil matter and, at the same time, an objective and human. Justice is the attribute of God, the integrity of the universe, the characteristics of human, the characteristics of society, social entities, law, ethicality and advocacy. It is not one-dimensional, single-spoken, single-subject, contractual, and relativism. The highest goal of the Prophets is to establish justice in the human society, and justice is based on the principle of wisdom, conscience and liberty, which can be understood by the human wisdom and recognized by its conscience and selected by its liberty. Justice has

intrinsic value, a true concept and rooted in nature. In the true and absolute, justice is from the principles of creation, and justice is not only individual virtue, but also social virtue. Equality in society, called Social Justice in society, is one of the notions of absolute justice, which is the topic of discussion here. Equality within society under the title of social justice is one of the elements of absolute justice that is the subject of our discussion.

In the financial system, Islam takes its public philosophy and mindset and observes the individual and social interests and stands in a position that does not harm any of the people of society and in practice sees justice as a fair distribution of wealth and financial resources.

The Prophet (PBUH) describes the justice criterion in the society in the following way: passing from the individual's interests and paying attention to the general interests of the public and identical and the same behavior of themselves and others. In Islam, the principle is based on the equality of human beings and the consequence of this equality is that everyone is the same with the right, and according to Muhammad Baqir Sadre Eslam, the leader of Islam, moves by considering two goals and approaches to establish the social justice:

First: being real

Second: being ethical

The purpose of being real is that the laws of Islam are consistent with human reality in the nature of the attribute. Being ethic is to take into account the mental and spiritual motives behind in the new laws. In his opinion, private law and market does not require the establishment of social justice and requires public law.

قال على عليه السلام:ما أَصبَحَ بِالكوُفه أحَدٌ الاّ ناعماً، اَن ادناهم مَنزِلَه لياكل البُـرَويجلس فـى الظل ويشرب من ماء الفرات.

Imam Ali Stated: Ma Asbaha Be Al-Kofah Ahad Ela Naeman An Adnahom Manzelah Al Barojlese Fi Al-Zele Va Yashrebe Men Mae Al-Farat.

There is no anyone in the city of Kufa that his/her life was not good. The lowest people eat bread and have a home and use the best drinking water

By these introductions, if the goal is to examine the principles and methods of economic analysis of law in order to establish the

right path, it can be said that the notion of justice is an absolute. Not only the law and the economy, but all sciences, must go to it. Therefore, every rule of low provides maximum efficiency, and provides a comprehensive development and growth in a society if puts everyone in a perfectly equal condition to information and power, while members of the society are in an equality in terms of livelihood. (Not income). These points all suggest that the closest translation of justice in human societies is not a except equality that should be the basis for an economic analysis of law, therefore, any basis chosen for the rights of the parties to the contract, or the amount of liability of the parties and the how to redress solatium, or in general is considered for establishing any rule of low that supply the most efficient and should be based on the principle of equality.

For example, in the learned hand formula, someone is responsible for redress solatium which it can prevent accidents at the lowest cost, except for those who enter to this way whether people are capable. This has been amount the future estimate, and the other is how this measure and precaution are evaluated and other deficiencies, but the requirement for justice is that individuals are in equality condition compared to estimate the costs and other materials related to their rights. Therefore, the criterion for the correctness of the views is not simply to increase pleasure and utility, but primarily is justice and equality of people.

But the key question raised is about justice, which leads to waste of resources, inefficiencies in the market, and finally the failure of the market. To explain this subject, the second part of the discussion should be needed to explain.

Second speech: Analysis and review of the rule of prohibition of detriment based on Islamic ideology

This principle is based on rational independents, and the wisdom alone can understand it, but for better explanation of subject, its document should be examined.

This rule, according to the famous Imamiyah jurists, governs on all the basic sentences. A narrative about rule of prohibition of detriment is the famous story of Somareh Bin Jandab, which Kulayni in Kafi, Tusi in Tahdhib al-Ahkam and Istibsar and Sheikh Abbas Qomi in Man la yahduruhu al-Faqih sated. The summary of the story is that the Somareh had a palm tree, which had to go

through the house of Ansari men for the use of it, but he was not allowed to enter the house, and Ansari ask him to allow, but he did not do this. Ansari made a complaint to the Prophet (PBUH). The prophet asked Somareh to allow but did not accept it yet. The Prophet asked him to sell the tree, he did not accept. The Prophet said: "Ansari go and take the tree out of the root and take it out, prohibition of detriment".

In order to summary the words, the important points are stated in a few points. Imam Khomeini said that none of the narrative are worthy of trust in the word (Fi Al-Islam), they are seen only in the hadith of Murseli, which is expressed by Saduq and Allamah.

First point: the concept of the Prophet's trial (PBUH): Human should not harm another person and reduce his right (Nahayat Imn Asir). There is no difference between Muslims and non-Muslims in this regard.

From the point of view of Sheikh Ansari, the things that are understood are: a) the rule of prohibition of detriment is negotiation the good. (B) The divine legislator has denied any harmful sentence from the school of Islam, and any harmful sentence has been not established by divine legislator, and any sentence which was harmful if it established or its execution was harmful. On the basis of this rule, it will be abolished. Also, as a detriment is removed on the page, it is true that it has been disclosed and any legal form that will be established on transactions and worship. A sentence is to be issued to respect or incumbency if it is harmful based on the rule of prohibition of detriment. For example, if a necessary sentence in a deception transaction is removed by one side, it is based on the rule of prohibition of detriment.

According to Imam Khomeini's opinion: kind of negation is meant to be forbidden, but not legal forbidden, such as forbidden drinking of wine or the Gamble forbidden, but also a government forbidden that the Prophet (PBUH) has issued as the Supreme Leader.

He considers the government sentences governing on all the basic sentence, and according to Sheikh Ansari says that the it is not rules of the requirement for this sentence, and the detriment negation did not cause the tree to be objected to and states that the Prophet (PBUH) was the ruler and, in order to dry the matter of corruption in the society, he ordered the tree to be cut. According to

him, there is no link between the rule of prohibition of detriment and other religious rules. And various items of jurisprudence do not require a prohibition of detriment proof. For example, if a deception transaction has been taken, it is only a matter of proofing the deception in the transaction that the option of deception can be used, and then no need deceptive to resort to the rule of prohibition of detriment and prove the enter the detriment to yourself.

Moreover, the government sentence is limited to time and place, but some of these general sentences are sentence and applied as long as they are expedient, the rule of prohibition of detriment is also in these sentences.

Second point: The famous Imamiyah jurists believe that the rule of prohibition of detriment is governing on rule of control over property. An individual's freedom to seize his/her property is so much that he does not detriment another and can harm others, but he/she can repel detriment and, according to Sheikh, if there is fear of harming another, it does not have the right to do so.

Third point: In opposition of a two detriment of rule of prohibition of detriment, there is a need to prefer a detriment on other detriment, and more important and important should be separated.

Fourth point: There are two types of division in the definition of a detriment.

A. Existence or non-existence of detriment: Some people believe that in order to realize the detriment, one must create a kind of deficiency (material and spiritual), and the detriment is an existential matter, in the opposite, when it comes to avoiding any gain, it is considered to be a detriment and considers disadvantage as a detriment.

B. Personal of typical: Personal detriment is a detriment that is clearly a detriment for the individual x or y, but in typical detriment, the individual x or y may be beneficial, but the type of people gains detriment. This criterion is much more complete. For the other, it does not matter whether there is an existence or non-existence detriment, as the type of people gains detriment, it is realized.

By these introductions, the answering to this question is possible. The question is that do someone have to adhere to the administration of justice in the formulation of rules and regulations,

or aware of scarce resources and prevent from its waste, which is the confirming the detriment.

According to the Sheikh opinion, because the rule of prohibition of detriment is governing on all basic sentences and every kind of detriment sentence is meted with rule of prohibition of detriment, and then the issue of what is related to private law, or public, therefore, if the contract is concluded. The sanctity of the contract is such that it is not created detriment and if the detriment from vindication to the promise is made to the opposite party or third party or to the public interest, and this detriment is greater than the damage caused by a breach of contract. In accordance with the rule of prohibition of detriment, a sentence for beach of contract may be issued.

Iran Khodro Co. under a the contract, undertakes to provide 60 RD cars with the features specified by Company for 750 million tomans, 6 months after the contract, but due to sudden changes in the car market, The car delivery at this price will not be good for the Company.

During the hearing, the judge should pay two points.

1. It does not matter which criterion chooses for the assessment of detriment. It is important to calculate all material and spiritual detriments of the parties.

2. Each criterion chosen must be equal in all circumstances to those who have more power or more information, do not win. However, the judge must also consider the social dimension more openly and, if the subject had the social and economic consequences, use expert opinion in this field. And without regard to its external effects, it does not issue a judgement. If the judge decides to adhere to the contract, it has several consequences if the production and delivery of the car with this cost to the company is non-economic.

A. The bankruptcy of car manufacture, along with the recession in the market for the purchase and sale, dismissal of workers, the increase of unemployment in the society and the economic dependence on car imports.

B. The increase in car prices, which causes inflation in other sectors of the economy, and finally the decline in social welfare.

Also, if the judge only considers the situation of the company and issue sentence for amendment of the contract, it may have other

consequences. Therefore, the judge should, according to the two points stated, should be issued a judgement that the greatest failure of the economic analysis is the neglect in two points.

After Sheikh Ansari, other jurists including Akhund Khorasani to today jurists chose a new position than rule of prohibition of detriment, which suggests that the Sheikh has neglected an important point, and that is that it is true that the rule of prohibition of detriment is governing on all the basic sentences. But this rule, with all its power, is a regulatory rule and not a rule of establishment. This rule may not be expanded to establish the subject, and if it is allowed by the rule of prohibition of detriment to cause the matter, it will terminate the contractor, or be an evidence for the annulment of the contract, it is contrary to the rule of prohibition of detriment and this is typically detriment. It may be beneficial to some people, but this type of license, individual type gain detriment because the lack of stability do not remain in the society. In other words, if the contract is detriment, and allow rule of prohibition of detriment take the subject to be canceled or terminated. There is no subject which rule of prohibition of detriment applying about it. The requirement of rule of prohibition of detriment is to eliminate the detriment and defect, and the establishment of the subject is contrary it. Therefore, the rule of prohibition of detriment rule is merely a monitoring rule that governs the legislator, which does not establish a law, to supervise a judge who does not issue a detriment order, and, in short, rely on a platform that preventing any phenomenon that could be detriment from trading to worship. However, if during the change of market conditions the transaction was detriment, by using this rule, the detriment was eliminated without giving a ruling on corruption or invalidation of the transaction, as in the case of Somareh, the Prophet eliminate detriment and do not ruled on invalidation any legal relationship. The rule of prohibition of detriment by relying on justice also assigns a risk to someone who can prevent the waste of resources and maximize efficiency without harming the parties. Of course, the breadth of the rule of prohibition of detriment is so much that it covers all ethical and social issues and is not limited to the field of economics. With the comparison between the views, there are not only two bases. In fact, there is a basis, and it is not a matter that the sheikh or any other Jurists locate against it against it,

and only to conceal it from the point of view of the sheikh, the intellectual two spectrum is created, and based on the viewpoint of the Sheikh, an idea for the economic analysis of law is established, which it is very free and based on the viewpoints of the Jurists, a different idea is to be formulated. But what is now confirmed by the Islamic school is that the principle of economic analysis of law is not a matter of doubt and denial, but it will be alive as long as it is based on the mentioned principles and methods.

Conclusions

By examination of the intellectual foundations of economic analysis of law rights and interests in the defects of the Western and Islamic doctrine of the Islamic world, it is concluded that that the reason for the opposition of some people with this field is their inability to properly understand it. The acceptance of the economic analysis of law means adopting a tool attitude to science of law by having the wrong pre-assumption. But the truth is not this, but the economic analysis of law does not challenge the firm foundations of the science of law, nor does it diminish the importance of economics, but is, by itself, a tool to bring more and more economic and law closer together, a tool to overcome the gaps them which is root of all injustices and inefficiencies. Therefore, the principle of this idea is accepted by us, but the most important shortcomings that lead to its diversion and its abandonment is the lack of sufficient richness in understanding the concept of justice. When the source of justice put in human affairs, it is easier to profit from it, and it has all the results which will be undesirable for us.

But when the root of justice became out of human control and put it in origin and creation, it will not be possible for anyone to misuse any of its methods.

It is justice that created rules such the rule of prohibition of detriment to control and monitor all aspects of human life, and if rule of prohibition of detriment can be prevented from detriment, it works best for maximum efficiency, not because it governs all of our early sentences. It is because its existential flower has been taken by an extract of justice, and as far as the rule of prohibition of detriment is close to the justice, economic analysis of law will not be rejected, but will be accepted, useful and effective.

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