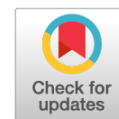


Paradoxes of Economic Theory in the Perception of Justice



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Abstract. *The article considers the economic theory at the main stages of its formation in relation to the phenomenon of justice. A variant of the topic disclosure is implemented through: a) distancing from existing and widespread practices of its knowledge; b) using the experience of these practices as a source and empirical material for diagnosing points of contact and discrepancies between the economic and legal approaches to justice, existing trends and distortions in economic and legal thought; c) extracting the desired understanding of what the “justice economy” is through analyzing and solving the problems of the research process devoted to it.*

Following this methodological course, we found that justice in economic theory is in a paradoxical state. And this state is not accidental. It is caused, as it was found out, by a number of circumstances. First of all, the impact of the negative experience of the knowledge of justice and the organization of its work in practice that underlies economic knowledge. Then the influence of stereotypes and biases that arose on its basis. Under the weight of a combination of these factors, science has removed justice from its sphere of competence and scientific and practical development.

At the same time, the study found that the contradictions identified in the economic idea are the property, and their struggle provides its Genesis. The main achievement of science is that it, despite its negative experience, gave this very experience. Its reinterpretation and verification in the modern socio-economic context makes it possible to make sure that justice can and should be considered as an economic enterprise.

Keywords: *economy, justice, Economics of justice, economic theory, law, jurisprudence, the cost of justice, gross domestic product, gross amount of claims, expenses, income.*

Consideration of the topic devoted to the economics of justice, at first glance, is fairly straightforward. It provides for the application of economic tools to the object under study, known as the spread of “economic theory to the space of law, which was previously monopolistically occupied by lawyers” (Kolesnikov, 2017, p. 4). At the same time, the interdisciplinary nature of the raised issues effaces the illusion of simplicity and evidence in the approach to the topic, making two distinct spheres of existence and a conflict of different paradigms of world perception clash in researchers’ minds. It dictates the need to determine the starting points of support from which the “economy of justice” will be viewed and studied. As a rule, authors fail to account for the influence of the designated conflict on their thoughts and do not bother to choose “starting points.” They produce a continuous mechanical overlay of economic terminology on the phenomena of the legal order that only approximate their meaning. For example, a crime is called a means of obtaining benefits, and punishment is the price imposed by law for using this means to satisfy needs. The economy in certain types of criminal

activity is distinguished much like the separation of economies in various types of production. This approach is in many ways linear. Either they complain about the inadmissibility of saving on justice, from the position of the sanctity of the law, or they point to the wastefulness of the law enforcement system from an economic position.

It is not suggested to follow one of these paths. The option of revealing the topic is implemented through a) distancing from existing widespread knowledge practices; b) using the experience of these practices as a source and empirical material for viewing the topic from the outside and from an interdisciplinary height; c) diagnosing points of contact and discrepancies between economic and legal approaches to justice, existing trends, and distortions in economic and legal thought; d) extracting the desired understanding of what “justice economy” is, through the analysis and elimination of problems of the relevant research process. Following this methodological course reveals that:

1) The topic under consideration is barely developed. In international and Russian sources, there are a small number of works devoted to

the identification of the economic component in justice and the role of justice in the economy. In most of the known cases, the choice of method to measure economy and justice is rarely due to specific studied objects and their compatibility. Rather, applicants are influenced by stereotypes about the phenomena under consideration or pre-determined interests that impact the outcomes of the research. Specialists rarely follow the example of Adam Smith, who demonstrated the standard approach to the knowledge of problems at the interdisciplinary level in the 18th century. As a result of simultaneous consideration of human behavior from the perspective of moralists, lawyers, and economists; the thinker found universal rules of social existence in the laws of justice, which differ from other virtues in their rigor and accuracy. At the same time, he excluded the economic criteria from their number, since it is impossible to establish and resolve the issues of duty in the behavior of an individual both in relation to himself and others (Smith, 1997, p. 320). This indicator is characterized by high mobility and instability due to the predominance of the profitability principle over obligation.

2) The history of legal thought does not include a single thinker who would question the importance of the justice institution for human society. Even Leo Tolstoy, an ardent and uncompromising government antagonist, equating it with evil and assiduously denying the benefits of law enforcement for society, in essence did not exclude justice from the life of humanity. He did not agree that violence was the main condition for the successful cohabitation of people, attributing such beliefs to false teachings imposed by the government. He noted that “all these courts, police, and troops most of all interfere with the friendly and consonant life of people.” “People, placing their hopes on all these devices,” the writer argued, “no longer care about establishing a peaceful life among themselves by their own efforts.” He believed that “in former times, torture, inquisitions, slavery, and in our time, courts, prisons, executions, and wars that kill millions,” are based on the misconception that it is permissible to “commit violence against one person in the name of the good of many.” Because of the many flaws of secular justice and its remoteness from the true goals of Christianity, the thinker adhered to the idea of “non-resistance to evil by violence” and was a supporter of moral judgment. He proposed “to take care about the judgment of one’s conscience and not about the judgment of men” (Tolstoy, 1910, p. 29, 37, 89).

3) An equally important observation is that confidence in the high status of justice and its deep roots in the nature of society are proved mainly by natural law. Conclusions about the impossibility of being a civilized society without

justice in most scientific works are based mainly on idealistic postulates. To justify the existence and administration of justice, its integration into universal philosophical systems of the world order, thinkers often lack knowledge about the positive purpose of this institution and its service to the public good. Let us recall the words of F.M. Dostoevsky, who called the courts a school for society and the people, where they learn truth and morality, or those of P. A. Holbach, who saw in justice the foundation of all social virtues. The philosopher argued that “in all societies, judges form a class of citizens whose activities are so useful that they must be distinguished from the general environment.” Judges under any form of government are required to “administer justice to their fellow citizens, enforce the laws—in a word, maintain order and tranquility” (Holbach, 1963, p. 276).

The use of axiological argumentation to determine the status of justice is explained by its vocation to strengthen the spiritual laws of social existence. As F.M. Dostoevsky noted, “in court, the first principle of the first case is that evil should be defined as far as possible, and, if possible, indicated and called evil by the people. Then, mitigating the fate of the criminal, taking care of his correction, etc.—these are all other issues, very deep, huge, but completely different from the judicial case, and related to completely different departments of the social life...” (Dostoevsky, 2010, pp. 26–27).

4) It should be noted that ethical and legal views of justice belong not only to philosopher-humanitarians. It is not exclusively their prerogative. Similar reasoning is used by economists. Adam Smith spoke the same of justice. He said that nations, “without judges to deal with the disputes that arise between them, are often forced to live in constant fear and anxiety” (Smith, 1997, p. 320). According to the economist, the courts are authorized to resort “to the power transferred to them by the government to maintain justice. Otherwise, society would be the scene of murder and disorder, and each person would resort to personal revenge for the wrongs that he believes have been inflicted upon him. In order to prevent the disturbances that would arise if each person decided to personally administer justice against himself, the courts in all states that have developed in any way try to render justice to all people, listen to and discuss complaints about all grievances” (Ibid., p. 328).

Even J.S. Mill, a direct opponent of abstract law principles and a follower of utility as the supreme judge over all ethical questions, paid tribute to the questions of legal responsibility for the individual “either directly to those whose interests are affected, or to society as their guardian[...]. To make a person responsible for what he has done wrong

is a general rule..." According to the scientist, it is "a benefit in a broad sense, that benefit which is based on the permanent interests inherent in man as a progressive being." "If someone commits an act that is harmful to others, then by prima facie he is subject to either legal punishment or public condemnation, if legal punishment is not applicable in the case," Mill added.

However, when legal mechanisms fail to work and prevent the individual from being held accountable for the wrong he has done, then conscience comes into play. "The individual's own conscience," wrote J.S. Mill, "must take the place of the absent judge, and guard those interests which are thus deprived of external protection. The individual must be a stricter judge for himself in such cases, because he is completely free from any other court." If he does not "harm other people, then people have no reason to interfere in what I do, no matter how stupid, reprehensible, reckless my actions may seem to them." Here he has "the freedom to choose and pursue this or that goal, the freedom to arrange his life according to his personal character, his personal discretion, to whatever consequences this may lead to for me personally" (Mill, 1864, p. 23-24).

5) Despite the demonstrated consistency and simplicity of the argumentation of business executives, the continuity of legal thought should be recognized and noted that historically, in the economic literature, there has been an extraordinary attitude toward justice. The presence of a dichotomy is felt here.

5.1) When economists speak from the position of moralists, they almost categorically distinguish justice among other factors that affect the success of the material well-being of society. They make the quality of the economy directly and tightly dependent on the quality of justice organized and administered in society. On the basis of evidence from the history of various countries, justice is raised to the level of a macro-indicator that determines economic development. According to the level of argumentation presented, it is possible to assess and safely say that they present justice as a key productive force. For example, when investigating the reasons for economic decline in Spain and Portugal, scientists noted that their conditions were affected by the discrepancy in export duties and the narrowing of the domestic market. But "most of all," they wrote, "is the disorderly and partial administration of justice, which often protects a rich and powerful debtor from the persecution of his injured creditor and makes the industrious part of the population reluctant to produce products for the consumption of those arrogant and powerful people whom they dare not refuse to sell on credit, and from whom they are not sure of receiving the debt payment."

Economic historians have explained the situation in China regarding the issue of justice. According to their observation, the country has not yet acquired the level of wealth that is compatible with the nature of its laws and institutions, the valuable properties of the soil, the advantageous geographical location, and the favorable climatic conditions. Experts have noted that in "a country where the rich owners of large capital enjoy almost complete immunity, and the poor or owners of small capital do not enjoy it at all, but are at any time subjected, under the pretext of justice administration, to robberies by the lower Mandarins, in such a country the amount of capital invested in all the various branches of its trade and industry can never reach the sizes possible due to the character and volume of the latter." It was possible to neutralize the harmful effects on the economy of England due to the freedom of trade and export of almost all types of goods that are products of the domestic industry, and the freedom to transport them from any part of the country without any obligations to the bureaucracy. However, as the economists pointed out, "the most important thing is that fair and impartial administration of justice which makes the rights of the humblest British subject inviolable to the most powerful men, and which, by securing to each the fruits of his labor, is the greatest and most effectual encouragement of all industries." In the same vein, the success of the economies of Scotland, Ireland, or the corn provinces of North America, where strict administration of justice ensured a more regular flow of income, was emphasized.

In connection with the positioning of justice as a leading economic force and its natural position in this status, experts recall the economic prerequisites that led to the formation and development of the justice institute. In particular, it has been noted that at the dawn of civilization, the monarch was the largest landowner, and on this basis, he differed very little from other large landowners who showed him a certain respect. In order to jointly protect their accumulated property, they were united, and the ruler transferred the functions of judicial administration in the relevant part of the country to those who were able to handle the case. Commanding, in the end, more people than anyone could afford, the monarch gained the ability to control and compel. Due to these qualities, he became the person to whom the weak began to turn for protection from violence and also for patronage. Thus, the economists conclude, it was origin and wealth that gave man a kind of judicial power.

Moreover, attention is drawn to the fact that the judicial power for the sovereign was not only the cause of expenses, but had for a long

time also been a source of income. Those who appealed to his justice were willing to pay for it. Gifts accompanied the petition. Then it was found that in addition to the satisfaction of the injured party, the culprit was forced to pay a penalty to the sovereign for the disturbance and disorder caused (Tyrrell, 1770).

5.2) When economists act in their own role and narrate from a purely sectoral position, they noticeably rotate the location of justice in the system of socioeconomic coordinates. It abruptly passes from a dominant and determining factor of the economy to a secondary, concomitant one, from a stimulating and favorable element to a costly one, from a socioeconomic institution to a purely legal one. "The study of the nature and causes of the wealth of nations" says Smith, is an illustrative example. Justice was not mentioned by the author in the first four books of this work devoted to the reasons for the increase in productivity and the order of distribution of products among different social classes, as well as the nature of capital, its accumulation and application, the development of well-being in different nations, and a system of political economy. The topic of justice is addressed in the last book, the fifth one. Here, he attributes it to the state and to the direct concerns of the ruler, considered from the perspective of the sovereign's expenses. On the basis of the concept of natural freedom, he argues that the sovereign should perform the following duties: "To protect, as far as possible, each member of society from injustice and oppression by its other members, and the duty to establish a good justice administration." That is, justice is disconnected from the economy, and its meaning is dispersed in the universal meaning. The role is reduced to the correction of "many harmful consequences of man's insanity and injustice," and the need for it is justified by comparison with the human body, where there are also mechanisms for "correcting the consequences of his carelessness and lack of restraint" (Smith, 1904, p. 172). It is perceived as a means of protecting other people from the harmful actions of their freedoms' violators.

At the same time, among the expenses, justice is far from being of the most advanced importance. It shares the second or even third place. Classical economic theory prescribes that the sovereign should initially spend money on defense, that is, the protection of society from violence and encroachment by other independent societies. Then, money must be spent on the organization of protection from internal violence. Third, economists instruct the sovereign "to create and maintain certain public structures and institutions, the creation and maintenance of which cannot be coopted by the interests of individuals or small groups, because the profit they produce can

never pay the costs of an individual or a small group, although it can often pay them in excess to a large society."

In J.S. Mill's "Foundations of Political Economy," the expenditure on "the whole body of the punishing power of criminal and partly civil justice" is called a burden on national industry. In terms of the amount of wasted wealth, they are placed in the second row, immediately after the damage caused to society by "human dishonesty" (Mill, 1878, p. 68), that is, by a predatory population living by robbery or deception. The work of lawyers is necessarily derived from the dishonesty of the latter and is mainly supported by it. The economist suggested that all the labor spent on the supervision of criminals should be considered "labor turned away from the actual occupation of production for auxiliary purposes, resulting not from the necessity of things, but from the dishonesty of people." Moreover, "all these costs are reduced in proportion to the rise of honesty in society" (Ibid., p. 68).

Justice is thus identified by economists with the unproductive and even barren class, since it is not thought to increase the value of an object or make a product. Along with merchants, artisans and manufacturers, it includes judicial officials, officers, and the entire Army and Navy. The expense of their maintenance, no matter how respectable this class may be, is not reimbursed. The value of labor of the non-productive class, as a rule, is not fixed and is not realized in any commodity suitable for sale. These services usually disappear at the moment of rendering them and rarely leave behind any value for which an equal number of services could be obtained later. It is in the interests of this segment not to infringe or oppress the productive class, since its occupations form the surplus for which justice is maintained. Spending on it is carried out from the remainder formed after deducting from the product that went toward the maintenance of the main productive forces. In other words, justice is exposed in economics as a kept woman. According to the laws of economics, the expenditure of the annual product is initially carried out for the reimbursement of capital. It should never apply for the maintenance of unproductive workers before it will lead to the completion of the full rate of productive labor and its movement. It is believed that only a spendthrift who changes the purpose of capital and acts to the detriment of productive workers' maintenance does otherwise. According to the logic of the economic manager, the economy of any enterprise should limit its expenses to its income, because otherwise it wastes its capital, turns its income to "vain goals," and pays for idleness from the fund intended for the maintenance of hard work.

6) Over time, the concepts of classical political economy have undergone some changes. The so-called new institutional economic theory was developed. Its difference from the neoclassical one is due to the refusal to idealize human economic behavior, no matter how carefully thought out and calculated it may be. The discovery that the basic state of people is based largely on limited rationality led to the discovery by R. Coase of the existence in the economic world of costs called “transaction costs” (Coase, 1937, p. 386–405). They accompany a person everywhere because of errors inherent in his social nature, due, for example, to limited abilities, incomplete knowledge, or an elementary tendency to make mistakes when making decisions in the real world. These “costs are universal due to the characteristics of individuals who make decisions” and occur “regardless of which economic sector the decision-makers operate in and what type of activity they carry out” (Furubotn, Richter, 2005, p. 39). The developers of the classical theory did not ignore these imperfections. They also identified and defined them as factors influencing the economic system. They referred to those motive forces that are called upon to help labor and only help production, which is able to do without them. These forces included, as a rule, “the qualities and abilities of the society itself,” the success of the actors in production, their physical and mental energy, the level of development of art and the quality of knowledge, and the moral reliability of the working class (Smith, 1904, p. 65–66). However, these determinants were not included in the economic mechanism and, as a result, were not evaluated in terms of value. They remained “foreign bodies” for the economic system, burdening its functioning.

For the authors of the new economic theory, it became obvious that “the relationship between the imperfection of human subjects and the costs of the economic system exploitation,” the need to assess these imperfections and include them in the latter. It was realized that an economic organization bears not only production, but also constituent, transaction or operating costs (Arrow, 1969, p. 48), including, for example, the costs of transferring property rights, establishing contractual rights between individuals and legal entities, protecting them, negotiating, providing information support, transferring knowledge packages, and providing consulting and educational services. Their delivery does not produce material products but leads to the exchange of data and contributes to the implementation of the production process (Miller, Vollmann, 1985).

As can be seen, the number of interest costs for economic analysis has significantly expanded. This led to the introduction of “social action” as a broader concept and to the interpretation of

economic transactions as a type of social transaction (Weber, 1968, p. 22). It is important to note that the new theory pays considerable attention to legal transactions, that is, the legal aspects of the goods’ movement and the authorization of the resources’ transport (Commons, 1934, p. 58). The costs in this area are divided by the costs that arise from installation, use and maintenance: 1) institutions in the sense of law (constitutional, civil or criminal laws), and 2) institutions in the sense of rights (for example, the fulfillment of obligations arising from a transaction).

The costs also included charges “for the creation, maintenance, use, modification, etc. of institutions and organizations,” while the costs themselves were divided into “variables” and “constants.” The continuous ones included the price of maintaining states that met a certain economic formation, of external and internal security, the administration of justice, and the provision of a minimum educational level. The constant presence of the latter in the goods’ production has led to the understanding that they need to be added to production and transport costs. The presence of education costs is associated with the specialization and division of labor, a purely economic necessity. It became obvious that transactions require real resources or, as experts called them, “transaction capital”—both the main transaction capital that goes to the state structure organization, and the working transaction capital that is spent on maintaining the current functioning of the political system.

The integration of transaction costs into the standard neoclassical model and their attribution to positive spending led to the conclusion that the economy should produce not only a material product, but also a public good, that is, the social actions necessary “for the formation and maintenance of the institutional framework in which economic activity is carried out. This framework includes formal and informal rules, as well as mechanisms to ensure their compliance,” including “transactions between politicians, bureaucracy and interest groups,” “routine actions of officials in the exercise of state power in the form of judicial decisions and the issuance of administrative acts.” Additionally, they take into account “a number of costs associated with the operation and adjustment of the state structure institutional framework,” which are also called political transaction costs. In essence, the authors of the new theory admit, all of these costs are those “associated with the “domestication of coercive force,” or the implementation of the “monopoly on organized violence,” which Adam Smith called “the duties of the sovereign” (Smith, 1776, p. 689, 709, 723). However, an important difference from the institutional concept is that

the new theory makes the cost amount dependent on the behavior of individuals and emphasizes the creation of a public good that affects this behavior. In particular, it creates conditions for the respect of private property or the dissemination of uniform ideas about justice and fair resolution of conflicts, and, in general, for the predominance of mutual trust in society. The appearance of these benefits, which correct for people's motivations, and the perception of spending on their creation as an investment, should lead to a reduction in those very transaction costs, that is, "friction" in society, and ultimately increase economic productivity.

7) The new economic theory, as can be seen, has made significant progress in the direction of justice. It did not repeat the experience of previous economic views on justice, whose fates were determined on the basis of linear logic. In those cases, the institution was either turned into a market and a means of earning money, or immediately after realizing the inadmissibility of subordinating justice to profit, it was removed from economic brackets and left in the care of budget "leftovers." Much has been corrected, although not all, which would allow us to note the absence of internal economic contradictions in relation to justice. First of all, the mentioned brackets are leveled, which are periodically made artificially to optimize economic processes. Justice is directly included in the composition of the economic organism from which it was previously excluded because of its productive sterility. In this respect, the economists dealt with justice in the same way as they had previously wrongly and undeservedly dealt with artisans, manufacturers, and merchants, who for a long time had been classified as an unproductive class. They found that they annually reproduce the value of their own consumption and retain the capital which contains it and provides them employment. Their labor is certainly less productive than that of farmers and agricultural workers, but it is recognized by science that the greater productivity of one class does not render another class barren and unproductive. Through the introduction of the task of shifting a public good into economic circulation, theorists have tried to bring the economic interpretation of justice closer to its moral side.

At the same time, it is clear from the demonstrated experience of economic thought that its position of justice continues to be controversial. In the understanding of this institution, there are discrepancies not only at the inter-industry level, legal and economic, but also at the intra-industry (economic) level. Justice is still counted as a cost and is viewed solely from that perspective. The maximum achievement of the latest scientific thought consists in the transfer of this institution from the status of "kept woman" to that of

"housekeeper." Its usefulness is determined by identifying it with an additional beneficial effect on social cohesion and conserving resources spent on this action.

7.1) There may be objective prerequisites for such an attitude toward justice. First of all, there is the insignificance and obscurity of the economic effect it produces, which allows it to be viewed in kind and measured in value terms, to distinguish it and its value among other economic indicators from the size of the statistical error. Perhaps long-standing stereotypes about the deliberate unprofitability of justice will prevail when the costs of solving and investigating a crime, judicial review of the incident, and execution of the sentence significantly exceed the amount of damage caused in the case of theft and is estimated at 5 to 10 thousand rubles. At the same time, the large-scale expansion of trade freedom and geography, the exponential jump in business activity of economic entities, the availability, efficiency, and extraterritoriality of legal remedies and financial services, which today involve not just individual countries, but entire continents, give science a long-sought optical focus that allows us to fully examine and evaluate the real role of justice in the economy.

Examples from international judicial practice show that the competence of modern jurisprudence is not limited to the localization of ordinary theft and civil law torts. It has reached the level of multinational corporations, where it imposes and collects multibillion-dollar fines. The German judicial system famously considered more than 400 thousand claims of motorists against Volkswagen and brought it to justice for a total of 30 billion euros. Or the practice of the European Court of Justice, which, in the case against Intel, demonstrated the ability and willingness, for reasons of reasonableness and protection of competition, to assess the legality of the enterprises' position in the market and to establish the facts of their dominant position abuse (Petit Nicolas, 2017, p. 728–750). No less informative and revealing are proceedings conducted by the American justice system, which assigns not only impressive fines, but also determines the composition and structure of markets. Witness the case of the United States and 19 of its states against Microsoft, when a district court found for the plaintiffs' accusations of antitrust law violations and ordered the breakup of the concern (Economides Nicholas, 2001). The court found that the company had a plan to reduce competition and expand monopoly power. This decision, according to experts at Boston University, demonstrated the existence of a correct legal standard that balances the benefits and harms of monopolization (Cass, Hylton, 1999).

Russian justice has not yet reached those heights. The role of justice as an economic tool

is difficult to detect, considering the level of its participation in the restoration of owner rights in the event of criminal seizure of their property. If the volume of GDP in Russia in 2018 amounted to 103,876 trillion rubles, then the damage from economic crimes, the restoration of which is administered by the justice system, for the same period is 403.8 billion rubles. If we take into account the damage from all crimes (for completed and suspended criminal cases, and refusal to initiate criminal proceedings on non-rehabilitating grounds), then the amount was 563,079,021 thousand rubles.¹ Comparison of these values justifies skepticism about justice, which concerns the economy in the modest range of 0.54% of the total Russian GDP. Yet if we approach this calculation in more detail and compare the GDP with the gross claims considered by the entire Russian justice system, including civil and arbitration courts, then we find a more tangible and visible value of the latter in the economy. For an accurate calculation, according to the data of the Judicial Department of the Russian Federation Supreme Court in 2018, the arbitration system resolved 1,848,113 cases in the amount of nearly 6 trillion rubles (5,883,778,380,000 RUB). The civil courts examined 23,212,755 cases in the amount of 2.390 trillion rubles. Thus, the total amount with which the judicial system directly operates is at least 8.836 trillion rubles, which is 8.5% of the GDP. The same figure, in comparison with the size of the Russian Federation federal budget, was 15.182 trillion rubles in 2018, indicating that the share of judicial presence and complicity in economic activities is at least 58.8%. The revealed values clearly show that previous ideas about justice were limited in nature. The current economic situation has revealed that in microeconomic terms, justice continues to act as a means of resolving economic disputes. In macroeconomic terms, it acts as a real regulator of trade and financial relations.

These figures indicate not only the significant role of the courts in the country's trade turnover, they also denote the fact that GDP growth is accompanied by a simultaneous increase in economic affairs. If in 2014, the system of arbitration courts received 1.528 million claims, in 2018 that figure was already 2.99 million. Over that four-year period, the growth was 27.2%. That this category of cases in its bulk was initiated and submitted to the justice system not under compulsion, but on a voluntary basis, indicates a conscious and purposeful involvement of entrepreneurs in the judicial mechanisms of commercial activities.

¹ State of crime in Russia for January-December 2018 // Collection of the Main Department of Legal Statistics and Information Technologies of the General Prosecutor's Office of the Russian Federation. Moscow, 2019. p. 8.

Furthermore, the proceedings in the cases under investigation were sent mainly at the expense of contractors, suggesting that they considered the costs quite feasible.

From the revealed values, it follows that other less expensive pretrial dispute settlement procedures are significantly inferior to the classical type of legal proceedings in terms of demand, and that justice is able to perform only a mediation function and at the microfinance level. In macroeconomic terms, it declares itself as an anti-crisis mechanism that ensures the turnover of the economic process. In the daily mode, it confirms its general purpose to remove civil turnover from the "thrombo-dangerous" state, when conflicts arise between producers, suppliers, intermediaries or consumers, and the movement of their capital stops and falls into a state of uncertainty, leaving normal economic life. The demonstrated figures leave no doubt that even a short-term "stupor" of 8.8 trillion rubles, which justice can avoid, is fatal for the national economy.

7.2) The reasons for the problematic position of justice in economic theory are not limited to the underlying stereotypes. Fixing and revealing the next observation allows for verification. The point is that contradictory attitudes of economic thought regarding justice in branch science is not indicated, and the conflict of interpretations in the understanding of the institution is not resolved. We can say that it is inactive to a certain extent. No matter the school of economics, interactions with justice are typically attributed to scientific and/or cognitive causes. Economic conditions are invariably discounted.

The new version of the economic approach is no exception. It continues to set itself apart from the personal. This time it is the "imperfect" person who needs constant correction. The next time, it will still be divorced from justice, only designed to correct that irrational person. It distances from them and positions them as non-participants in their own lives. It behaves as if the economy does not affect people and does not aggravate their morals or corrupt them, but only ensures their existence. It perceives the individual and his vices as hindrances that prevent the economy from achieving perfect performance.

Delving into the history of economic thought reveals that the detachment of business executives from the problematic situation of justice is not accidental. And despite appearances, it is not due to the fact that the issues of justice come from legal studies and are not directly related to economics. Theoretically, it should not pertain to the definition of this phenomenon. Abstraction has a logical, historical, and psychological explanation, hidden from the naked eye and gathering dust on the shelves of the distant past. Today it is

latent, but palpably indicated, acting mainly on the subconscious level. At its height, there is a limitation that does not allow economists to accept and comprehend justice in its entirety. It turns out they are constrained by previous bitter experience. Experts are influenced by the fear of their own history, which knows examples of how economic practice, taking patronage over justice, has perverted its purpose. Smith recalled the unsightly past of European history. He found that it was not uncommon to subordinate the justice system goals of obtaining income, forming part of the Basic Law of Economics. This establishment led to many different abuses and, above all, to the extreme corruption of the judicial administration. For a long time it was, as the scholar observed, “very far from justice and impartiality even under the best monarchs, and completely depraved under the worst. [...]” A person who applied to justice with a large gift received more than he was entitled to, and a person whose gift was too small received less. What’s more, the administration of justice was often delayed so that the gift could be presented again. On the other hand, a fine against the person to whom the complaint was lodged could often be a strong consideration in favor of his accusation, even if in reality he was right.” Attempts to regulate the number of gifts or, as they were also called, “court fees,” were not successful. They could not prevent the omnipotence of human greed or act as a real remedy against “the depravity of justice, which was the result of the arbitrariness and uncertainty of these gifts.” In the end, it was profit, as the main business of the economy, that discredited justice and led to the understanding that achieving impartiality was possible only through securing its independence from profit as the determining or accompanying incentive. In other words, financial reward began to be assessed as incompatible with justice and served as the reason for the transfer of this institution to a new economic track. After assigning judges a salary from the treasury as compensation for the loss of their income from legal proceedings, the organizers of the judicial community began to care less about the revenue and only about the expenditure part of justice. In turn, judges were freed from the perception of cases as a way and source of obtaining their own means of subsistence.

Thus, paradoxically, finding justice in economic theory is not accidental. It is caused, as it turns out, by a number of circumstances. First of all, the impact of the negative experience of knowing justice and organizing its work in practice formed the basis of economic knowledge. Then, there is the influence of stereotypes and prejudices that have arisen on its basis. Under the weight of a combination of these factors, science has taken

justice out of its sphere of competence, scientific and practical development and handed to the legal and political sciences.

We should also expect that the transformation of the global economy will change the attitude of scientific thought with regard to justice. This expectation, however, should not be replaced by the demand for the idea to surpass itself. Over the long history of its formation and development, it has already reproduced what distinguishes it from other concepts: unconditional originality. A different approach would lead to the moralization or legitimization of the economic view, that is, to the loss, substitution, or blurring of a purely sectoral element. The contradictions revealed in the economic idea are property, and their struggle provides its genesis. Moreover, there is nothing wrong with the competition of open interpretations. They reflect and correspond to the rivalry of motives that determine a person’s behavior.

The main achievement of science is that it, despite its negative experience, provided this experience. Its reinterpretation and verification in the modern socioeconomic context guarantee that justice should and will be considered as an economic enterprise. First, justice, as an independent shop in the “food chain” does not forego the consumption of resources. Secondly, it is engaged in “feeding” others, so to speak. It removes, returns, or redistributes capital. Moreover, representatives of the business community confidently answer the question of what justice is and whether it can be considered as an economic tool. Despite the cost of legal proceedings, the average annual increase in applicants to Russian arbitration is 7–10%. When resolving the issue of applying to the court, they are guided by the same commercial logic and interest in maximizing benefits that they adhere to in their daily work on the production, supply, or consumption of goods and services. They seek through the courts and at the expense of the counterparty, to, at the least, restore their lost financial position or, at most, to strengthen it. As a result, there is no doubt that the appeal of economic turnover to the court is regarded as a means of economic regulation. Through their efforts, justice is immersed in the economic space, where it is located among economic entities, used by them to achieve commercial success and directly affect the turnover of their activities’ products. At the expense of this achievement, it can be said that the traditional appeal to the court is made as an additional means of ensuring the reliability of trading operations. However, in the light of the revealed values, it expresses the role of justice as the highest and final rung in the economic hierarchy. It not only compensates for imperfections within the market mechanisms to balance the ambitions of their participants, but also stabilizes the economic model as a whole. Despite

the unambiguity and persuasiveness of the above arguments, it is important to add that justice still remains an atypical economic institution. It resolves economic disputes according to non-economic principles and laws. Moreover, in epistemological terms, the economic perception of justice stands in opposition to the legal one. In contrast to the legal view, the economic approach to justice does not elevate, but lands high-flown arguments about it. It offers to “come down to earth” and find confirmation of the elevated status of justice, as part of the consumer basket. It offers the opportunity to dive into the field of human needs and find “justice” among them. It promotes the search for arguments that can convince users to move justice from a secondary status to one of urgency. From an axiological point of view, the economic angle allows us to determine how serious the consumer is about justice and whether it is used for idle purposes.

The atypical nature of justice is due to its existential status. The universal significance of the canons underlie any and every sphere of human community life and their location on the interdisciplinary plane. A linear perception of this atypical nature tends to lead to erroneous conclusions about the productive futility of justice and to discard it on the sidelines of economic science. At the same time, it is known from the history of English legal proceedings that the modification of the economic paradigm of justice turned it from a means of profit into a mechanism for achieving justice and social harmony. It did not cancel the internal competition of courts for involving most cases in their jurisdiction. Other legal values were adopted. Their attractiveness was ensured by the efficiency and impartiality of the cases’ resolution. The same benefits have become the main product of their activities and the subject of their implementation.

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Парадоксы экономической теории в восприятии правосудия

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Аннотация. В статье рассмотрена экономическая теория на основных этапах своего становления в отношении к феномену правосудия. Реализуется вариант раскрытия темы через: а) дистанцирование от существующих и широко распространенных практик ее познания; б) использование опыта этих практик в качестве исходного и эмпирического материала для диагностирования точек соприкосновения и расхождения между экономическим и юридическим подходом к правосудию, существующих в экономико-правовой мысли тенденций и перекосов; в) извлечение искомого понимания того, что есть «экономика правосудия», через анализ и устранение проблем посвященного ей исследовательского процесса.

Следование отмеченному методологическому курсу позволило обнаружить, что правосудие в экономической теории находится в парадоксальном состоянии. И это состояние не случайно. Оно обусловлено, как выяснено, рядом обстоятельств. Прежде всего воздействием лежащих в основе экономического знания негативного опыта познания правосудия и организации его работы на практике. Затем влиянием возникших на ее почве стереотипов и предубеждений. Под весом совокупности этих факторов наука вывела правосудие из сферы своей компетенции и научно-практической разработки.

Вместе с тем в ходе исследования установлено, что выявленные в экономической идее противоречия составляют достояние, а их борьба обеспечивает ее генезис. Главное достижение науки заключается в том, что она, несмотря на свой негативный опыт, дала этот самый опыт. Его переосмысление и верификация в современном социально-экономическом контексте дает возможность убедиться в том, что правосудие может быть рассмотрено и должно рассматриваться в качестве экономического предприятия.

Ключевые слова: экономика, правосудие, экономика правосудия, экономическая теория, право, правоведение, юриспруденция, стоимость правосудия, валовый внутренний продукт, валовая сумма исковых требований, расходы, доходы.

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